

# Exhibit 2

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 AUSTIN FENNER and  
6 IKIMULISA LIVINGSTON,

7  
8 Plaintiffs,

9 v.

09 Civ. 9832

10 (BSJ) (RLE)

11 NEWS CORPORATION, NYP HOLDINGS,  
12 INC. d/b/a THE NEW YORK POST  
13 and DAN GREENFIELD and  
14 MICHELLE GOTTHELF,

15 Defendants.

16 -----x

17  
18 DEPOSITION OF AUSTIN FENNER

19 New York, New York

20 January 11, 2012

21  
22 Reported by:

23 MARY F. BOWMAN, RPR, CRR

24 JOB NO. 45411  
25

Page 30

1 FENNER  
2 meeting?  
3 A. I went to seek legal counsel.  
4 Q. And was your -- and did you do  
5 that?  
6 A. I eventually did seek legal  
7 counsel.  
8 Q. Was that Mr. Thompson?  
9 A. That is correct.  
10 Q. Besides yourself, Mr. Fenner, who  
11 attended the meeting?  
12 A. My coplaintiff, Ikimulisa  
13 Livingston, Leonard Green, Gary Miller, Neil  
14 Graves.  
15 Q. So it was five people?  
16 A. I believe that's correct.  
17 Q. And did you discuss with those  
18 individuals the bringing of a lawsuit against  
19 the New York Post?  
20 A. That was the intent of the meeting  
21 because we all felt we needed legal  
22 protection.  
23 Q. And you're aware that only  
24 Ms. Livingston and yourself have filed  
25 lawsuits against the Post?

Page 32

1 FENNER  
2 A. They expressed the idea that we  
3 should try to figure out what we should do  
4 next.  
5 Q. And did you -- when you met with  
6 your attorneys, Mr. Thompson, were you  
7 accompanied by any of the people that were at  
8 that meeting?  
9 A. I went by myself.  
10 Q. Have you had any conversations with  
11 Mr. Graves or Mr. Green or Mr. Miller about  
12 the reasons why they chose not to join in  
13 your lawsuit?  
14 A. I didn't ask them why they did not  
15 join the lawsuit.  
16 Q. Did they tell you why they chose  
17 not to join in the lawsuit?  
18 A. I can't recall them saying,  
19 answering why they didn't join the lawsuit.  
20 Q. Do you know if they have lawyers?  
21 A. I don't know.  
22 Q. You were criticized by your  
23 editors, Michelle Gotthelf and Dan Greenfield  
24 for your performance at the Post, correct?  
25 A. They wrote false evaluations which

Page 31

1 FENNER  
2 A. That's correct.  
3 Q. Did you want Mr. Green or  
4 Mr. Miller or Mr. Graves to join in your  
5 lawsuit?  
6 A. I don't know if it is a question of  
7 whether I wanted them to do it or not. I  
8 wanted to hear what they had to say. That's  
9 why I went to that meeting.  
10 Q. What did they have to say about  
11 joining in the lawsuit?  
12 MR. THOMPSON: Objection.  
13 A. Well, we were trying to figure out  
14 what we should do, what should be our next  
15 step.  
16 Q. What did they have to say about  
17 joining the lawsuit?  
18 MR. THOMPSON: Objection.  
19 A. They expressed the same thought,  
20 same idea, trying to figure out what we  
21 should do, how we should do it.  
22 Q. Did they say they would not join in  
23 the lawsuit?  
24 A. They didn't say that.  
25 Q. Did they say that they would?

Page 33

1 FENNER  
2 they used to discriminate against me and used  
3 as a tool to fire me from the Post.  
4 Q. Mr. Fenner, it is a yes or no  
5 question.  
6 MR. THOMPSON: Objection.  
7 Q. You were criticized by your editors  
8 for your performance at the Post, correct?  
9 A. They wrote unfair and false  
10 evaluations.  
11 Q. Mr. Fenner, this is a yes or no  
12 question.  
13 MR. THOMPSON: Let him answer the  
14 question.  
15 Q. You were criticized, they  
16 criticized you right?  
17 A. Can you repeat your question.  
18 Q. You were criticized by Ms. Gotthelf  
19 and Mr. Greenfield for your performance at  
20 the Post, right?  
21 A. In what way?  
22 Q. They criticized you?  
23 A. They wrote unfair and false  
24 evaluations --  
25 Q. Mr. Fenner, you are going to get a

Page 38

FENNER

Q. Any of Obama's political adversaries, either as a local politician or national one.

A. Well, the scope of the story was he was running for the presidency of the United States.

Q. My question was, did you interview any of Obama's political adversaries while you were in Chicago?

A. I don't recall. If I had a copy of my story, it would refresh my recollection.

Q. You would -- would you agree with me that this e-mail of May 2, Fenner Exhibit 1, is a highly critical e-mail?

A. Michelle Gottself criticized my work, yes.

Q. What is the basis, do you believe that her criticism in this e-mail was an example of Ms. Gottself discriminating against you?

A. No.

Q. Did you write a response to Ms. Gottself to this e-mail?

A. I don't recall if I did.

Page 40

FENNER

Q. And you did not do that on that trip, correct?

A. Correct.

MR. LERNER: I am going to mark Fenner Exhibit 2, AF 561 through 563.

For the record, Fenner Exhibit 1 is Bates number NYPFL 610.

(Exhibit 2, document Bates stamped AF561 through 563 marked for identification, as of this date.)

Q. Take a look at Fenner Exhibit 2. We will get some other copies going around.

Fenner Exhibit 2 is an e-mail dated Monday, May 19, 2008. Mr. Fenner, do you recognize this e-mail?

A. I'm still reading it.

I recognize it.

Q. The e-mail was written by Neil Sloane to you --

A. That is correct.

Q. -- on that date?

Who is Neil Sloane?

A. He is an editor.

Q. Does he work for the city desk?

Page 39

FENNER

Q. Did you disagree with Ms. Gottself in that e-mail?

A. The story I wrote was a solid story. It wasn't -- it was not a sensational story. It wasn't a -- it was a tale of what was happening. It was not a hot story.

Q. So you agreed with Ms. Gottself that you did not get what she sent you to Chicago to get?

A. Can I elaborate?

Q. No. It is a simple question. Did you agree with her or not?

A. The story I produced -- my goal was to get an interview with Jeremiah Wright. I didn't get that.

Ms. Gottself is saying that she wanted a -- she wanted a sensational story, the story I produced was not that.

Q. The Post is a tabloid newspaper, correct?

A. That's correct.

Q. Its goal is to uncover and run sensational stories, correct?

A. That's correct.

Page 41

FENNER

A. That is correct.

Q. And what story does this e-mail concern?

A. There is a singer, a crooner named R. Kelly and he was being charged in Chicago criminal court for sexual abuse of an under-age girl.

Q. That was a story of national interest, is that fair to say?

A. Yes.

Q. Were you sent to Chicago to get that story?

A. That's correct.

Q. And Mr. Sloane, in his e-mail to you, was critical of the story that you wrote, correct?

A. Correct.

Q. And he showed you actually two versions of the story, a version number 1 and version number 2, and asked you to compare the two, right?

A. That's correct.

Q. Just for the record, an e-mail version number 1 was the story that you

Page 42

FENNER

submitted and version number 2 was the story that was rewritten by somebody at the Post, right?

A. They added copy to the story, yes.

Q. And Mr. Fenner, you did not list Mr. Sloane as up with of the people who discriminated against you at the Post when I asked you that question earlier. Do you recall that?

A. I recall that.

Q. And do you stand by that answer? In other words, was Mr. Sloane somebody who discriminated against you?

A. No.

Q. And do you consider this e-mail to be an example of discrimination against you?

A. No.

Q. In the two versions, do you recall or did you determine from reading it today what the difference is between the two versions of these stories?

A. The second version is longer. It has like three more sentences to it.

Q. Did you, do you know what piece of

Page 43

FENNER

information is in the second version, the version that was rewritten, that wasn't in the first version?

MR. THOMPSON: Objection, document speaks for itself.

Q. Mr. Fenner, I would like to direct you --

A. I'm reading the copy.

Q. I am going to direct your attention -- you can read it -- but I am going to draw your attention to the paragraph in the second story, "They face one significant roadblock."

A. I see that.

Q. Mr. Fenner, would you agree that the fact that the victim of the child pornography crime denied being involved and that that fact is in the rewritten story but it was not in your story?

A. That's correct.

Q. Would you agree that that is an interesting and unique aspect to the story involving R. Kelly?

MR. THOMPSON: Objection.

Page 44

FENNER

A. Yes.

Q. And that was not in your original story, correct?

MR. THOMPSON: Objection.

A. No, I don't have it here.

Q. Did you know that fact when you wrote your story?

A. Yes.

Q. And you chose to leave it out?

A. I didn't choose to leave it out.

Q. Did you forget to include it?

A. I was under incredible deadline pressure that day. I had to obtain press credentials to get into the courtroom; otherwise, I would not have been able to cover the case and that's why I was sent to Chicago.

The story I wrote is a preview story, a curtain raiser, as they call it, and I was under the gun to try to find the sheriff's office for Cook County, get my credentials and file by the 5 o'clock deadline in New York.

Q. So my question was, did you forget

Page 45

FENNER

to include it?

A. I would have wanted to put that in the story, yes.

Q. Have you ever covered a criminal case in which the person that the prosecutor said is the victim of the crime actually comes forward in the trial and says that's not me?

A. I've covered many criminal court cases.

Q. Have you ever, have you ever covered a case in which the person the prosecutors say is the victim actually comes forward and says I'm not the victim of this crime, this didn't happen to me?

A. I've covered cases where the victim has denied, has denied those cases, like a domestic violence case.

Q. Have you ever covered a case in which the victim says I wasn't even there?

A. I recall covering cases where the victim denies that the crime was committed against them.

Q. You would agree that it is a unique

<p style="text-align: right;">Page 50</p> <p>1 FENNER</p> <p>2 A. I can't recall that.</p> <p>3 Q. Did Mr. Hechtman rewrite that</p> <p>4 story?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you know if that story ever ran?</p> <p>7 A. I don't know. I can't recall.</p> <p>8 Q. Did you do anything to correct the</p> <p>9 factual and grammatical errors in that story?</p> <p>10 A. I worked on many, many stories for</p> <p>11 the New York Post, well over 150. I can't</p> <p>12 recall exactly what I did in this particular</p> <p>13 instance.</p> <p>14 Q. Do you believe that Mr. Hechtman</p> <p>15 discriminated against you while you were at</p> <p>16 the Post?</p> <p>17 A. No.</p> <p>18 Q. And who was Mr. Hechtman?</p> <p>19 A. He was the night editor.</p> <p>20 MR. LERNER: All right, it is 5 to</p> <p>21 11. We have a 11 o'clock call with the</p> <p>22 court so we will take a break now.</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 10:55 a.m. We are off the record.</p> <p>25 (Recess)</p>	<p style="text-align: right;">Page 51</p> <p>1 FENNER</p> <p>2 THE VIDEOGRAPHER: The time is</p> <p>3 11:23 a.m. We are on the record.</p> <p>4 Q. Mr. Fenner, do you recall being</p> <p>5 assigned a story about a radio personality</p> <p>6 named Wendy Williams?</p> <p>7 A. I wasn't assigned that story. It</p> <p>8 was an enterprise story I wrote and pitched</p> <p>9 and produced for the New York Post.</p> <p>10 Q. And where was that story based out</p> <p>11 of?</p> <p>12 A. New York City.</p> <p>13 Q. And how did you come to develop</p> <p>14 that story?</p> <p>15 MR. THOMPSON: Objection.</p> <p>16 A. I was working as a journalist for</p> <p>17 the Post and I have many sources for stories.</p> <p>18 At that time, Ken Thompson was a practicing</p> <p>19 attorney in New York and I had developed a</p> <p>20 relationship with him and I had learned about</p> <p>21 the Wendy Williams story through him.</p> <p>22 Q. This was in or about June of 2008?</p> <p>23 A. I can't recall the date right now.</p> <p>24 Q. Do you recall -- did you write that</p> <p>25 story?</p>
<p style="text-align: right;">Page 52</p> <p>1 FENNER</p> <p>2 A. I did.</p> <p>3 Q. Do you recall your editors</p> <p>4 criticizing you for missing the lead in that</p> <p>5 story?</p> <p>6 A. I can't recall right now. If you</p> <p>7 can show me something, it would refresh my</p> <p>8 recollection.</p> <p>9 Q. Take a look at Fenner Exhibit 3.</p> <p>10 There is a -- the fourth paragraph down,</p> <p>11 under the handwritten note "Sloane."</p> <p>12 Do you see that paragraph? We</p> <p>13 permitted him to write a story that he did</p> <p>14 pitch on WBLS Shock Jock Wendy Williams and</p> <p>15 Austin actually missed the whole point of the</p> <p>16 story. Do you see that?</p> <p>17 A. I read that.</p> <p>18 Q. Was that a criticism that was</p> <p>19 communicated to you at the time?</p> <p>20 A. I can't recall.</p> <p>21 Q. Did Mr. Sloane tell you that the</p> <p>22 lead of the story was buried in the middle of</p> <p>23 what you wrote?</p> <p>24 A. My editor and I collaborated on the</p> <p>25 story. I wrote the story and he made a</p>	<p style="text-align: right;">Page 53</p> <p>1 FENNER</p> <p>2 suggestion that we go with another element</p> <p>3 that was in the story.</p> <p>4 Q. What was that element?</p> <p>5 A. If I had the story in front of me,</p> <p>6 I could tell you.</p> <p>7 Q. Was it that Wendy Williams' husband</p> <p>8 had planned to assassinate a rival DJ of</p> <p>9 Wendy Williams?</p> <p>10 A. I think that's what he wanted to go</p> <p>11 with as the lead.</p> <p>12 Q. As the lead. Do you remember what</p> <p>13 you had as the lead?</p> <p>14 A. No.</p> <p>15 Q. Did you agree with him that that</p> <p>16 was the best lead for that story?</p> <p>17 A. Well, you know, you could write a</p> <p>18 story in many different ways. I've written</p> <p>19 stories and the lead has been changed --</p> <p>20 Q. I understand that. My question</p> <p>21 is --</p> <p>22 A. I'm not finished.</p> <p>23 MR. THOMPSON: Mr. Lerner, you have</p> <p>24 to let him finish answering your</p> <p>25 question. You can't just cut him off and</p>



Page 54

FENNER

he wasn't finished.

Q. The question was, did you agree?

MR. THOMPSON: No, no. He wasn't finished. Mark, you have cut him off repeatedly.

MR. LERNER: Of course I have.

MR. THOMPSON: It is improper. You have to let the witness finish answering your question. If you don't, this deposition is not going to work.

MR. LERNER: I agree with that, Ken. It is not going to work if the witness doesn't answer the question.

MR. THOMPSON: Please let him answer the question that you posed.

MR. LERNER: I know he is going to try.

Q. This is the question. The question was, did you agree that the lead that Mr. Sloane ultimately put on the story was the better lead for the story?

A. I don't have the story in front of me. I need to read the whole story.

Q. Let's put it in front of you.

Page 56

FENNER

that Mr. Sloane did not take the piece of the story that you had placed in the middle and turned it into the lead?

A. No, I believe that he wanted to go with this lead.

Q. And in your opinion today, did his making this the lead improve the story?

A. Many reporters write stories and the leads are always changed. The editor is the final arbiter --

Q. Was this a better lead?

A. I wasn't finished.

Q. Was this a better lead?

A. I wasn't finished my comment.

Q. That's the problem. It was a comment. You need to provide an answer.

MR. THOMPSON: He was providing an answer.

Q. And the question was, did this lead improve the story?

A. I like his lead. It is a good lead. You can go with -- you can go with many different leads on a story. The New York Times is going to write a story with a

Page 55

FENNER

Mr. Fenner, I am putting in front of you a document that has been marked as Fenner Exhibit 4, which is a binder of stories that carry your byline, and the Bates numbers are NYPFL 2633 through 3214. And I have opened it to NYPFL 3196.

(Exhibit 4, document Bates stamped NYPFL 2633 through 3214 marked for identification, as of this date.)

MR. THOMPSON: What was that Bates number again?

MR. LERNER: 3196.

MR. THOMPSON: Thanks.

Q. Mr. Fenner, do you recall the lead as you have written the story?

A. This is the published story.

Q. Agreed. Do you recall the lead on the story that you submitted?

A. I wrote many, many stories during my tenure at the New York Post. I wrote over 150 stories. I worked on over 150 stories for the paper. I don't recall the lead before it was -- before we came to this one.

Q. Do you have any reason to believe

Page 57

FENNER

different lead than the New York Post. The Daily News is going to write a story with a different lead. Sometimes they are the same, sometimes they are different.

Q. Was this the best lead for the New York Post?

A. I like his lead, I agree with it.

Q. You do not believe Mr. Sloane's actions with respect to the story were discriminatory, do you?

A. His actions being changing the lead on a story?

Q. Yes.

A. No.

Q. Having discussed this now, do you recall Mr. Sloane being critical of you at the time for not adopting the lead that he ultimately went with in your original story?

A. He suggested we go with a different lead. That happens.

Q. Was he critical of you?

A. He suggested we go with this lead. He said next time -- he wanted to go with this lead.

Page 58	Page 59
<p>1 FENNER</p> <p>2 Q. What did you say?</p> <p>3 A. I agreed -- he said we should go</p> <p>4 with the rub-out lead.</p> <p>5 Q. And what did he say about next</p> <p>6 time?</p> <p>7 A. I was -- he didn't say next time.</p> <p>8 There was no next time. We were talking</p> <p>9 specifically about this story.</p> <p>10 Q. My question is was he making a</p> <p>11 general remark about your reporting when he</p> <p>12 commented to you about this story?</p> <p>13 MR. THOMPSON: Objection.</p> <p>14 A. He wanted to change the lead and I</p> <p>15 agreed with his change.</p> <p>16 Q. Did he say words to the effect of</p> <p>17 next time, Austin, you need to find the lead</p> <p>18 that the Post would want to run?</p> <p>19 A. No.</p> <p>20 Q. And lead with that?</p> <p>21 A. No.</p> <p>22 Q. Did he say anything about your</p> <p>23 performance going forward that he wanted to</p> <p>24 see changed?</p> <p>25 A. No. I did great work under Neil</p>	<p>1 FENNER</p> <p>2 Sloane.</p> <p>3 Q. Do you recall a story about a</p> <p>4 window washer who fell 47 stories and lived?</p> <p>5 A. I do.</p> <p>6 Q. Do you recall your editors</p> <p>7 criticizing you for your work on that story,</p> <p>8 in reporting that story?</p> <p>9 A. Yes.</p> <p>10 Q. What was their criticism?</p> <p>11 A. I can't recall right now.</p> <p>12 Q. Were you unable to secure an</p> <p>13 interview with the individual who fell or his</p> <p>14 family members during your first attempts to</p> <p>15 do so?</p> <p>16 A. This was a very difficult story to</p> <p>17 get. This was a man who was washing a window</p> <p>18 on the 47th floor of a skyscraper with his</p> <p>19 brother. He watched his brother fall and die</p> <p>20 and he miraculously survived. I was able to</p> <p>21 get this man to talk about this nightmarish</p> <p>22 event in his live.</p> <p>23 Q. Do you recall what your editors</p> <p>24 criticized you for?</p> <p>25 A. I think there is an e-mail about</p>
Page 60	Page 61
<p>1 FENNER</p> <p>2 it.</p> <p>3 Q. And what is your recollection now?</p> <p>4 A. If you can show it to me, it would</p> <p>5 refresh my recollection.</p> <p>6 Q. Take a look at Fenner Exhibit 3,</p> <p>7 second paragraph.</p> <p>8 A. I read it.</p> <p>9 Q. Does that refresh your</p> <p>10 recollection?</p> <p>11 A. It does.</p> <p>12 Q. And what was, what did your editors</p> <p>13 say to you at that time?</p> <p>14 A. Do you want me to read what's</p> <p>15 there?</p> <p>16 Q. No, I want you to -- you said it</p> <p>17 refreshed your recollection, I would like to</p> <p>18 know what --</p> <p>19 A. This is it. That is the</p> <p>20 recollection.</p> <p>21 Q. So you have that recollection now?</p> <p>22 A. These words are the recollection.</p> <p>23 Q. Is it your recollection or is it</p> <p>24 simply -- in other words, I want to know, do</p> <p>25 you have a memory of this exchange now that</p>	<p>1 FENNER</p> <p>2 you have read this?</p> <p>3 A. I have a memory of reading this</p> <p>4 e-mail.</p> <p>5 Q. Back in -- when you were employed</p> <p>6 at the Post?</p> <p>7 A. Yes.</p> <p>8 Q. And what was your reaction to that</p> <p>9 criticism back then?</p> <p>10 A. It was false and unfair. It was</p> <p>11 discriminatory.</p> <p>12 Q. Why?</p> <p>13 A. Because I did get the interview.</p> <p>14 All right.</p> <p>15 Q. Did your editors have to send you</p> <p>16 back to keep trying to get that interview?</p> <p>17 A. I had been traveling on many</p> <p>18 different stories out of town. I had been</p> <p>19 traveling the country --</p> <p>20 Q. Did your editors send you back to</p> <p>21 get that interview?</p> <p>22 A. That's correct.</p> <p>23 Q. And so that is -- it is true that</p> <p>24 they sent you back. Did they send you back</p> <p>25 once, twice, how many times?</p>



Page 62

1 FENNER

2 A. They sent me back because I

3 couldn't get the interview with the

4 individual who we are talking about because

5 his wife was there. She said he was in a

6 rehab facility.

7 He had fallen 47 stories. He was

8 trying to get his life back together. I

9 interviewed the wife probably three times,

10 and she was not there. So the reason why I

11 went back because he was not physically in

12 the home, he was in a rehab facility in New

13 Jersey, near South Orange.

14 Q. And where did you eventually get

15 the interview?

16 A. At his home.

17 Q. Did the story run?

18 A. Yes, it did.

19 Q. Was it a good story?

20 A. Yes.

21 Q. Did you agree with your editors

22 that you should go back to try to persist and

23 try to get that interview?

24 A. Yeah, why not. It is a great

25 story.

Page 64

1 FENNER

2 A. I don't understand your question

3 when you said how long did it take.

4 Q. How many days did it take?

5 A. I just told you, he was not home.

6 Q. So I understand. Did it take a

7 week? Did it take more than a week?

8 A. He was away from the home --

9 Q. How long between --

10 A. For probably weeks. He had fallen

11 47 stories.

12 Q. What is the basis of your opinion

13 that Mr. Greenfield's criticism of you was

14 discriminatory?

15 A. It is untrue and it is unfair. He

16 says we had to constantly hound -- where are

17 we -- Austin to get the window washer story.

18 And I just explained where the window washer

19 was.

20 Q. Did he hound you?

21 A. Greenfield?

22 Q. Yes.

23 A. When you say -- what do you mean

24 hound me? Did he --

25 Q. Did Greenfield or your editors

Page 63

1 FENNER

2 Q. How long did it take you to get

3 that interview?

4 A. Like I said a moment ago, I went to

5 his house several times. I interviewed his

6 wife on at least three different occasions, I

7 attempted to have her trust me with their

8 family story and take me to the rehab

9 facility where her husband was staying.

10 And through the course of time, I

11 was building a relationship and trust. It

12 doesn't happen overnight. Sometimes it

13 happens that day. But you have to work

14 people to gain their trust and this woman was

15 relaying as she told me --

16 Q. Mr. Fenner, I understand that --

17 A. I wasn't finished my sentence.

18 Q. My question is how long did it take

19 you to get that interview?

20 A. Can I finish my statement?

21 Q. I'm afraid you can't. The question

22 is, how long did it take you to get that

23 interview?

24 MR. THOMPSON: He can finish

25 answering your question.

Page 65

1 FENNER

2 hound you --

3 A. They dispatched me--

4 Q. -- hound you to get that story?

5 A. They dispatched me to the window

6 washer's house.

7 Q. Multiple times?

8 A. We had to go back because he wasn't

9 there.

10 Q. Did they send you back multiple

11 times to keep trying?

12 A. He was not there every time we

13 arrived at his home.

14 Q. Did they send you back?

15 A. I had been traveling on other

16 stories and working on other stories.

17 Q. Did you receive --

18 A. I --

19 Q. Did you receive instructions --

20 A. I wasn't finished my statement.

21 Q. -- instructions from your editors

22 to go back?

23 A. I was juggling multiple

24 assignments. I had to do enterprise work. I

25 was traveling on out-of-town assignments. I

Page 66

1 FENNER  
 2 was covering breaking news.  
 3 Q. Did they send you back multiple  
 4 times?  
 5 A. Yes.  
 6 Q. And what is the basis for your  
 7 belief that the criticism was based on your  
 8 race?  
 9 A. Because this was eventually used in  
 10 my evaluations which were discriminatory and  
 11 unfair in assessing my work. I had done  
 12 great work for the paper. I had done  
 13 award-winning work for the paper.  
 14 Q. Did Mr. --  
 15 MR. THOMPSON: He is answering your  
 16 question, Mr. Lerner. You cannot cut him  
 17 off.  
 18 Please continue, Mr. Fenner.  
 19 A. And I had gotten exclusives for the  
 20 paper. This was used to discriminate me  
 21 because I am black. They used this in  
 22 treating me different than my white  
 23 colleagues with those evaluations and this  
 24 was part of the tool they used when I had  
 25 done incredible work for the paper.

Page 68

1 FENNER  
 2 MR. LERNER: Let's take a break.  
 3 MR. THOMPSON: Sure.  
 4 THE VIDEOGRAPHER: The time is  
 5 11:43 a.m. We are off the record.  
 6 (Recess)  
 7 THE VIDEOGRAPHER: The time is  
 8 11:59 a.m., we are on the record.  
 9 MR. LERNER: Mr. Thompson, I know  
 10 you had a discussion with your client  
 11 outside of the room. We need to have the  
 12 questions that I ask answered directly.  
 13 Otherwise, we are not going to finish the  
 14 deposition in seven hours.  
 15 MR. THOMPSON: Mr. Lerner, he has  
 16 answered your question directly.  
 17 MR. LERNER: I understand that's  
 18 your opinion.  
 19 MR. THOMPSON: It is a fact. The  
 20 record will reflect that.  
 21 MR. LERNER: It is not my opinion?  
 22 MR. THOMPSON: It doesn't matter.  
 23 The record is what it is.  
 24 MR. LERNER: My point is not to  
 25 argue with you whether or not he is doing

Page 67

1 FENNER  
 2 Q. And did Mr. Greenfield ever use a  
 3 racial epithet?  
 4 A. He was a loose cannon.  
 5 Q. Did he ever use a racial epithet?  
 6 A. He cursed at me. He yelled at me.  
 7 He said what the fuck are you doing.  
 8 Q. Did he ever --  
 9 A. He said to me, you better get your  
 10 fucking ass over there. He went off on me.  
 11 Q. Did he ever use a racial epithet?  
 12 A. He cursed at me.  
 13 Q. This is a yes or no answer,  
 14 Mr. Fenner?  
 15 A. He debased me.  
 16 Q. Did he ever use a racial epithet?  
 17 A. He --  
 18 Q. Mr. Fenner. If you can't answer  
 19 the question, we will get a court order  
 20 requiring you to answer the question, because  
 21 that is a requirement.  
 22 Did he ever use a racial epithet?  
 23 A. No.  
 24 MR. THOMPSON: We are going to take  
 25 a break.

Page 69

1 FENNER  
 2 it. My point is to let you know if it  
 3 persists, we will call the court.  
 4 MR. THOMPSON: You can call the  
 5 court any time you want. The purpose for  
 6 us being here is to ask him questions, so  
 7 ask him.  
 8 Q. Mr. Fenner, are you ready to  
 9 proceed?  
 10 A. I'm ready.  
 11 Q. On the -- with respect to the  
 12 window washer, Mr. Greenfield's criticism of  
 13 you was that you did not take the initiative  
 14 to return to the window washer each time to  
 15 try to get that interview, is that correct?  
 16 A. I did on my own.  
 17 Q. I am asking you if that was his  
 18 criticism of you?  
 19 A. I made several attempts. I took  
 20 the initiative. I knew it was a great story  
 21 and I got a great story.  
 22 Q. Was that Mr. Greenfield's criticism  
 23 of you, that you failed to take the  
 24 initiative?  
 25 A. I don't recall if he told me that.

Page 70	Page 71
<p>1 FENNER</p> <p>2 Q. Did somebody tell you that?</p> <p>3 A. I can't recall right now.</p> <p>4 Q. Did -- was there, when you were</p> <p>5 sent back by your editors, did they express</p> <p>6 annoyance to you that they were having to</p> <p>7 tell you to go back?</p> <p>8 A. I can't recall.</p> <p>9 Q. Who told you to go back?</p> <p>10 A. My editors dispatched me to the</p> <p>11 window washer's house.</p> <p>12 Q. When you say dispatched, it means</p> <p>13 they instructed you to go back there and try</p> <p>14 to get that interview?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you recall how many times they</p> <p>17 dispatched you back to the house?</p> <p>18 A. When I went to the house and I said</p> <p>19 he wasn't there and we are not going to get</p> <p>20 anything --</p> <p>21 Q. My question is, do you recall how</p> <p>22 many times they instructed to you to go back?</p> <p>23 A. We visited the house at least three</p> <p>24 or four times.</p> <p>25 Q. And was there an instruction from</p>	<p>1 FENNER</p> <p>2 your editor prior to each of those times?</p> <p>3 A. Yes, we were working in</p> <p>4 collaboration.</p> <p>5 Q. Over what period of time between</p> <p>6 your first contact with the house trying to</p> <p>7 get the story and the time that you got the</p> <p>8 story, how much time elapsed?</p> <p>9 A. Between the first time we visited</p> <p>10 his home?</p> <p>11 Q. Yes.</p> <p>12 A. And the publication of the story?</p> <p>13 Q. Yes.</p> <p>14 A. How many times had we gone there?</p> <p>15 Q. No, how much time elapsed? How</p> <p>16 many days or weeks?</p> <p>17 A. I don't know exactly how many days.</p> <p>18 But like I said, the man was recuperating in</p> <p>19 the facility.</p> <p>20 Q. So you don't remember how long it</p> <p>21 was?</p> <p>22 A. I said I don't recall right now.</p> <p>23 Q. Was it more or less than one week?</p> <p>24 A. Yes.</p> <p>25 Q. So it was more than one week?</p>
Page 72	Page 73
<p>1 FENNER</p> <p>2 A. It was more than one week.</p> <p>3 Q. Was it more than --</p> <p>4 A. He was in a rehab facility.</p> <p>5 Q. Was it more than two weeks?</p> <p>6 A. What's the question?</p> <p>7 Q. How much time elapsed between your</p> <p>8 first attempt to get the interview and the</p> <p>9 time the story ran? All I am trying to get a</p> <p>10 sense of is how long did it take.</p> <p>11 A. It wasn't a week. I don't think --</p> <p>12 it wasn't a week. And I don't recall exactly</p> <p>13 how long. It might have been two, could have</p> <p>14 been three, but I don't know.</p> <p>15 Q. OK. Were you assigned to cover the</p> <p>16 Columbia expansion, Columbia University</p> <p>17 expansion?</p> <p>18 A. No, I worked with Dan Colarusso and</p> <p>19 told him this was an area that needed</p> <p>20 attention, that there were no newspapers</p> <p>21 paying attention to the Columbia expansion</p> <p>22 and we should own it.</p> <p>23 Q. Did you have a source inside</p> <p>24 Columbia University regarding the Columbia</p> <p>25 expansion?</p>	<p>1 FENNER</p> <p>2 A. I was developing sources, yes.</p> <p>3 Q. Did you develop a source inside</p> <p>4 Columbia University?</p> <p>5 A. Yes.</p> <p>6 Q. Who -- how did you develop that</p> <p>7 source?</p> <p>8 A. We were working the story and going</p> <p>9 to community board meetings and going to</p> <p>10 protests where people who were angry about</p> <p>11 the expansion plan had a vested interest in</p> <p>12 the issue.</p> <p>13 Q. Did you quote that source in your</p> <p>14 stories?</p> <p>15 A. I quoted several sources in my -- I</p> <p>16 quoted several sources in my stories.</p> <p>17 Q. Was that -- were those sources</p> <p>18 named in the stories?</p> <p>19 A. They might have been.</p> <p>20 Q. Did you have any confidential</p> <p>21 sources within Columbia University?</p> <p>22 A. I would have to see the work that</p> <p>23 we produced to see if it says source or not.</p> <p>24 Q. As you sit here today, can you</p> <p>25 think of any confidential source that you had</p>

Page 74

Page 75

1 FENNER  
 2 within Columbia University on those stories?  
 3 A. I can't recall right now.  
 4 Q. Did your editors assign you stories  
 5 relating to the Columbia University  
 6 expansion?  
 7 A. No, I pitched a series of stories.  
 8 One of those stories was about the Cotton  
 9 Club business, and through our work, through  
 10 doing great work on that story, we helped  
 11 this man save his business from the imminent  
 12 domain issue that was hovering over many of  
 13 the businesses in Columbia, in the Columbia  
 14 expansion plan.  
 15 Q. How many stories did you pitch  
 16 relating to the Columbia University  
 17 expansion?  
 18 A. Many.  
 19 Q. How many ran?  
 20 A. Maybe five. I can't recall the  
 21 exact number right now.  
 22 Q. Do you know how many you pitched?  
 23 A. I can't recall the exact number  
 24 right now.  
 25 Q. Were any of your stories turned

1 FENNER  
 2 down by the city desk?  
 3 A. Yes.  
 4 Q. How many?  
 5 A. I can't recall the exact number.  
 6 Q. Were you ever criticized by your  
 7 editors for your reporting on the Columbia  
 8 University expansion?  
 9 A. I can't recall right now.  
 10 Q. Did your editors tell you that you  
 11 were not pitching enough stories relating to  
 12 the Columbia University expansion?  
 13 A. I can't recall that right now.  
 14 Q. Were there any stories about the  
 15 Columbia University expansion that were  
 16 developed by the city desk and assigned to  
 17 you?  
 18 A. I can't recall if -- I can't recall  
 19 if you're talking about a particular story  
 20 that they might have assigned. I know I  
 21 pitched many stories, that was part of my  
 22 enterprise week.  
 23 Q. By -- you were hired in  
 24 approximately the middle of 2007, right?  
 25 A. May 2007.

Page 76

Page 77

1 FENNER  
 2 Q. May of '07. By May of '08, you had  
 3 been at the Post about a year, correct?  
 4 A. Correct.  
 5 Q. And what were your -- what were  
 6 your reporting duties by May of 2008? In  
 7 other words, were you in the street most of  
 8 the time or were you in the office most of  
 9 the time?  
 10 A. I was hired as an enterprise  
 11 reporter which required me to pitch stories,  
 12 cover breaking news, and cover out of town  
 13 assignments for the paper. So it was a mix.  
 14 Q. Did that group of responsibilities  
 15 put you in the street most of the time or in  
 16 the office? What was the --  
 17 MR. THOMPSON: Objection.  
 18 Q. -- what was the balance of your  
 19 time?  
 20 A. It was a mix.  
 21 Q. Would you agree that about a year,  
 22 just using about a year in May of 2008, that  
 23 you were primarily working as a street  
 24 reporter?  
 25 A. No.

1 FENNER  
 2 Q. What were you -- what does the term  
 3 "street reporter" mean to you?  
 4 A. You mean someone who is not in the  
 5 office?  
 6 Q. Yes. Is that what you were  
 7 primarily were by mid '08?  
 8 A. Not at all.  
 9 Q. You were in the office?  
 10 A. I was a senior reporter working at  
 11 the paper.  
 12 Q. Where were you performing your job?  
 13 A. I just said it was a mix.  
 14 Q. So sometimes you were in the  
 15 office, sometimes you were out?  
 16 A. Sometimes I was in the office,  
 17 sometimes I was out on breaking news  
 18 assignments, sometimes I was traveling on  
 19 behalf of the paper.  
 20 Q. Approximately what percentage of  
 21 your time by May of '08 -- you had been at  
 22 the Post for one year -- were you in the  
 23 office?  
 24 A. I can't give you a percentage or  
 25 breakdown right now.

Page 78

FENNER

Q. Was it 10 percent, 20 percent?

MR. THOMPSON: Objection.

A. I think it was a mix. It might have been 33 percent on all -- I was -- it might have been a third on each one. I don't know.

Q. A third in the office, a third on the street in New York, and a third on the road traveling? Is that what you mean by 33 percent each?

A. I don't have an exact mathematical breakdown to give you.

Q. I understand that. By May of 2008, how much of your work was -- what percentage of your work was the work of a street reporter?

A. I couldn't tell you that number.

Q. How much of your work was producing enterprise stories?

A. Like I said, it was a mix. And I can't give you a mathematical breakdown.

Q. What enterprise stories did you produce during the first year of your employment at the Post?

Page 79

FENNER

A. I did several. I did many. I wrote stories about an identity theft story. It was a military burial -- it was a -- it was an identity theft story.

Q. Got it. Identity theft in a military burial?

A. Right.

Q. What else?

A. It was a man who had been convicted of murder in Connecticut who had mistakenly assumed his neighbor had molested his child and I was able to get this man to send a handwritten, handwritten letter about why he did this and what went wrong.

Q. A letter to whom?

A. It was addressed to me at the New York Post.

Q. Can you define an enterprise story?

A. An enterprise story is an story that's off the radar, a story that is original reporting and of interest to the public.

Q. Does it involve more research and more reporting than a nonenterprise story?

Page 80

FENNER

A. It can.

Q. But it is original, off the radar and it is of interest to the public?

A. Those are some of the elements.

Q. Can you think of any other enterprise story that you wrote in your first year at the Post?

A. The Columbia expansion stories, the Wendy Williams story. And there were others.

Q. Can you tell me what the others were?

A. If I had a list, I could refresh my recollection.

Q. Did you ever decline a request to stay late to cover a breaking news story?

A. Did I ever decline a request to stay late?

Q. Yes, to cover a breaking news story?

A. I think you're referring to a story where I had child care issues and I had to pick up my daughter from my mother's house and my wife was out of town.

My mother, at that time, would have

Page 81

FENNER

been about 86. So I think that's what you might be referring to.

Q. So the answer is yes, you did?

A. Can you repeat the question?

Q. Did you ever decline a request to stay late to cover a breaking news story?

A. I had child care issues. I had to -- I called my editors to see if they could send someone to relieve me. So the answer is I never declined a request to stay late, no. The answer is no.

Q. The answer is ---

A. I didn't decline a request. I called in to get relief on a story. I never declined a request to stay late on a story.

Q. And what happened after you made that call?

A. The editors looked to see if there were any other reporters who were starting their shifts and who could relieve me.

Q. Did they find any?

A. I can't recall in this particular one. I would assume that happened.

Q. You did not cover that story?



Page 82

FENNER

A. No, I was on the story. I had been on the story from probably 7 in the morning and this was probably about 8 at night.

Q. What was the story?

A. I can't recall the story at this very moment.

Q. Did you file a story?

A. I covered many stories. I'm not exactly sure which one you might be referring to.

Q. Did you ever file a story on that occasion?

A. I can't recall exactly which story this is.

Q. Did you -- do you -- did you ever decline a request to stay late to cover a breaking news story on another occasion?

MR. THOMPSON: Objection.

A. No. Did I ever decline a request to stay late? Is that what you are asking?

Q. Yes.

A. Never. I never declined to do any work. I fulfilled all my responsibilities.

I was highly motivated to go cover any story

Page 83

FENNER

that was on the docket of the paper.

Q. How would you rate your writing skills, Mr. Fenner?

A. They're good.

Q. Are they on a -- what does "good" mean?

A. We all want to improve and do better. You always leave room. That's what keeps you going. So good is when you do exceptional work and you are always pushing yourself to do better.

Q. Did you think you can do better as a writer?

A. I've done exceptional work, I've done award-winning work and I always push myself to do better.

Q. Do you think you can be a better writer than you are?

A. Yes.

Q. Did your editors criticize your writing?

A. Yes.

Q. In those instances when they criticized your writing, did you agree with

Page 84

FENNER

their critiques?

A. No.

Q. Why not?

A. Because they were unfair. They were using those critiques to racially discriminate against me and get me out the paper.

Q. So the critiques were just false?

A. You're talking about each and every critique ever given to me?

Q. When they critiqued the quality of your writing?

A. Are you referring to my evaluations or what are you referring to?

Q. Well, how often did they critique your -- did they criticize your writing? Did they do it verbally in conversations with you?

A. I know they did it in my evaluation.

Q. The written evaluation?

A. That's correct.

Q. Did they also do it verbally?

A. I can't recall right now.

Page 85

FENNER

Q. Were your editors ever correct when they criticized your writing?

A. You're making a broad statement. It wasn't -- it was never -- if I was getting a critique, it would have been maybe on a particular story like you showed me the Wendy Williams story.

Q. Did you ever -- did you ever get a critique from your editors on your writing where you understood where they were coming from?

MR. THOMPSON: Objection.

A. We collaborated on stories. If you're saying like the Wendy Williams story, my editor suggested we put a new lead on it. Yes, that happened. We work in collaboration.

Q. What about your sentence structure, choice of words, writing in the Post style? Did you get criticisms along those lines as well?

A. I wrote great stories for the paper.

Q. Did you get criticisms along those



Page 90	Page 91
<p>1 FENNER</p> <p>2 A. Well, if we go to the Wendy</p> <p>3 Williams example.</p> <p>4 Q. I am just asking, were some of your</p> <p>5 stories not good?</p> <p>6 A. No, they wouldn't have been</p> <p>7 published if they weren't good.</p> <p>8 Q. Were some of your stories not</p> <p>9 published?</p> <p>10 A. As far as I knew, all of my stories</p> <p>11 was published.</p> <p>12 Q. Every one of your stories were</p> <p>13 published?</p> <p>14 A. Sometimes editors don't publish</p> <p>15 stories for space reasons because other</p> <p>16 breaking news occurs and they want to go with</p> <p>17 a bigger story that developed during the</p> <p>18 course of a day.</p> <p>19 Q. Isn't it the case that your stories</p> <p>20 that you submitted were subject to editing</p> <p>21 and rewriting by another reporter called a</p> <p>22 rewrite?</p> <p>23 A. Many of the reporters at the paper</p> <p>24 were rewrite reporters.</p> <p>25 Q. That's what I am asking you. I am</p>	<p>1 FENNER</p> <p>2 asking if you are reporting on the street and</p> <p>3 you file a story, it goes to a rewrite who</p> <p>4 then rewrites the story before it is</p> <p>5 published, right?</p> <p>6 A. Sometimes.</p> <p>7 Q. So the stories that you -- that are</p> <p>8 published under your byline aren't</p> <p>9 necessarily stories that you wrote the final</p> <p>10 story on, right?</p> <p>11 MR. THOMPSON: Objection.</p> <p>12 A. I don't know because I'm not inside</p> <p>13 the office and seeing who is editing the</p> <p>14 story.</p> <p>15 Q. You read your stories that are</p> <p>16 published?</p> <p>17 A. That's correct.</p> <p>18 Q. Under your byline?</p> <p>19 A. That's correct.</p> <p>20 Q. You will know if what's published</p> <p>21 in the paper the next day, how that compares</p> <p>22 to what you submitted?</p> <p>23 A. There might have been stories where</p> <p>24 a lead was changed, yes.</p> <p>25 Q. Where they are completely</p>
Page 92	Page 93
<p>1 FENNER</p> <p>2 rewritten, right?</p> <p>3 A. No.</p> <p>4 Q. It never happened that a story that</p> <p>5 you submitted was completely rewritten?</p> <p>6 A. You are asking about the whole</p> <p>7 universe of the stories I worked on and I</p> <p>8 worked on many different stories.</p> <p>9 Q. Well, yeah.</p> <p>10 A. Do you -- there is a question?</p> <p>11 Q. Yes.</p> <p>12 A. Which is what?</p> <p>13 Q. Isn't it a fact that stories that</p> <p>14 you submitted were rewritten by rewrite</p> <p>15 reporters?</p> <p>16 MR. THOMPSON: Let the record</p> <p>17 reflect that Jordan Lippner just said</p> <p>18 "Jesus Christ" in response to</p> <p>19 Mr. Fenner's answer. That is totally</p> <p>20 inappropriate and we ask Mr. Lippner not</p> <p>21 to do that at this deposition.</p> <p>22 Q. Well, Mr. Fenner?</p> <p>23 A. Yes.</p> <p>24 Q. Isn't it a fact that stories that</p> <p>25 you submitted to the Post were rewritten by</p>	<p>1 FENNER</p> <p>2 rewrite reporters?</p> <p>3 A. They may have been.</p> <p>4 Q. Mr. Fenner, I am going to place in</p> <p>5 front of you a document marked NYPFL 477</p> <p>6 through 480 and it will be marked Fenner</p> <p>7 Exhibit 5.</p> <p>8 (Exhibit 5, document Bates stamped</p> <p>9 NYPFL 477 through 480 marked for</p> <p>10 identification, as of this date.)</p> <p>11 Q. Did you receive this performance</p> <p>12 appraisal in 2008?</p> <p>13 A. In 2008?</p> <p>14 Q. Yes.</p> <p>15 A. It is dated -- yes.</p> <p>16 Q. Did you review it and sign it?</p> <p>17 A. I read it, I signed it to</p> <p>18 acknowledge that I saw it.</p> <p>19 Q. The overall rating that the</p> <p>20 appraisal gave you was a 6 out of 7 with 1 as</p> <p>21 the highest and 7 is the lowest, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Six means must improve, rarely</p> <p>24 meets standards, correct?</p> <p>25 A. That's what it says.</p>

Page 94

FENNER

Q. And on the last page, there is an employee comment section. Did you submit any comments in response to this performance review?

A. I wrote a self-evaluation.

Q. In 2008?

A. I wrote a self-evaluation in 2008 which stands as my record for what I thought about my work and the strength of my work as a journalist at the New York Post.

Q. Are you sure that you wrote one in 2008?

A. Yes.

Q. As opposed to 2009?

A. Yes.

Q. Have you seen that document in connection with this lawsuit?

A. I can't recall right now.

Q. The self-evaluation was done prior to your getting the APA review, correct?

A. That's correct.

Q. So you did the self-evaluation, you then received this APA review, and you did not comment on the APA review after you

Page 95

FENNER

received it, right?

A. I did not comment because I wanted my self-evaluation to stand as a record of what I did for the year. The space is very small.

Q. Do you recall what that self-evaluation said?

A. If you have a copy of it, it would refresh my recollection.

Q. Have you seen it? I actually I had this question a moment ago. You said you couldn't recall if you had ever seen that document in connection with this lawsuit, is that correct?

A. The self-evaluation?

Q. A 2008 self-evaluation?

A. I would have written the self-evaluation.

Q. My question is, have you, did you produce it in this lawsuit?

A. I can't recall.

Q. You would regard this as a very negative -- would you regard this as a very negative evaluation?

Page 96

FENNER

A. I would regard it as a racially discriminatory document which was used against me.

Q. And what is the basis of your believing that the criticisms in this document were based on your race?

A. It was false and untrue. And this, these are falls and untrue and don't reflect the true work that I did as a reporter, as a journalist at the New York Post.

Q. How do you know that the falsity of them that you allege was done because you are African American?

A. Because they treated me differently than my white colleagues at the paper.

Q. How do you know that this negative performance evaluation was negative because you are African American?

A. Because they wanted to get me out of the paper.

Q. How do you know that they wanted to do that because you are African American?

A. I had been verbally screamed at and yelled at and harassed by my editors since

Page 97

FENNER

Michelle Gotthelf had assumed control of the city desk. And when I saw this, this review, my words to Michelle Gotthelf and Amy Scialdone was I'm being with set up. That's what I said to them.

And during the course of that interview, Amy Scialdone said to me, do you really want to be here? This is a human resources manager who was showing me the door.

Q. When did that -- when did you have that conversation with Ms. Scialdone?

A. When I was presented with this document.

Q. Did Ms. Scialdone or Mr. Greenfield or Ms. Gotthelf ever tell you that the reason they were giving you a negative performance review was because you were African American?

A. Did they say that verbally to me. is your question?

Q. Yes, that's my question.

A. They treated me --

Q. Did they say that verbally to you?

A. The way they treated me --

Page 98

FENNER

Q. Mr. Fenner, it is a yes or no question. Did they tell you that it was because of your race?

A. No, they didn't have to say it was because I'm black.

Q. So the answer is no, they didn't?

A. I said no, they didn't have to say it was because I'm black.

Q. But they -- OK. And did anybody else at the New York Post tell you that the reason for this negative performance evaluation was because you're African American?

A. There is many people that work at the New York Post. I was presented this review by my supervisor and Amy Scialdone.

Q. Did Ms. Gotthelf ever use racially derogatory language with you that referenced the fact that you are an African American?

A. She was outright nasty to me. She was constantly yelling at me and giving me unfair criticisms about my work.

Q. Did she ever say anything that used a racial epithet or referred to the fact that

Page 99

FENNER

you are African American?

A. Not to my knowledge. I didn't hear her use a racial epithet.

Q. And same question about Ms. Scialdone, did she ever do that?

A. Not to my knowledge, I didn't hear her use a racial epithet.

Q. Did Michelle Gotthelf or Dan Greenfield ever raise their voice at white reporters?

A. Not to my knowledge. If they did, I wasn't around.

Q. Do you know for a fact that Michelle Gotthelf and Dan Greenfield did not yell at white reporters?

A. They did not yell at white reporters?

Q. Yeah, do you know that for a fact?

A. I don't know -- I don't know it for a fact.

Q. Do you have any reason to believe that Michelle Gotthelf and Dan Greenfield never yelled at white reporters working on the city desk?

Page 100

FENNER

A. Repeat your question.

Q. Do you have any reason to believe that --

MR. LIPPNER: Mark.

Q. Withdrawn.

One of the criticisms in this performance evaluation is that during your first year at the Post, you did not initiate or produce top notch enterprise stories for the Post?

A. Your question is?

Q. Is that criticism, was that criticism of you factually based?

A. It is unfair. It is unfair --

Q. Why is it unfair?

A. Because I did -- I did great work as a journalist, as a reporter for the New York --

Q. Did you produce top notch --

A. Yes.

MR. THOMPSON: Mr. Lerner, don't cut off the witness. You have to let the witness finish answering his question.

Q. -- for the New York Post?

Page 101

FENNER

A. I did great work, award-winning work.

Q. What award did you win for your work at the Post during the first year?

A. The New York Post covered the Obama inauguration and they won the coveted New York Press Club Award in 2010. I wrote a story, enterprise story about a Harlem congregation that Martin Luther King visited ten days before his assassination and this congregation was attending.

Q. Mr. Fenner, --

A. I wasn't finished.

Q. I don't need to know all the details about the story. My question is what award did you win and you said the New York Post won an award.

A. I was part of a team, the inauguration team that won the New York Press Club Award.

Q. And how many people were reporting on Obama's inauguration for the New York Post?

A. There were several people on the

Page 102

FENNER

team.

Q. More than five?

A. It was a historic event. So there were -- there was a team and everyone contributed to the production of an award-winning piece.

Q. The award was not issued in your name, was it?

A. It was issued to the staff of the New York Post and the contributors who worked on pieces that were published for the inauguration and with that, they beat out --

Q. How long was the story that you wrote on the bus ride?

A. I don't know.

Q. Was it --

A. It was several inches.

Q. Was it a long story?

A. It was part of the package. It was a sidebar.

Q. It was less than 300 words, wasn't it?

A. I don't know the number of words in the story.

Page 104

FENNER

A. All reporters pitch stories; some are good, some are bad, some are accepted, and others are published. Dan and Michelle unfairly criticized many of the stories that I had suggested to go into the paper.

Q. And why did you believe that their criticism of your proposed stories was unfair?

A. Well, some of them -- criticisms of my stories were unfair? They wanted me out of the paper. They didn't want me working there as a black senior reporter at the paper.

Q. Well, you said that they criticized the stories that you suggested to be published. Why were those -- why were those criticisms unfair about your story, about your stories?

MR. THOMPSON: Objection.

Q. What were they saying about your pitches that was unfair?

A. They didn't have an interest in elevating my career. They didn't -- they would not -- they would summarily knock down

Page 103

FENNER

Q. You were happy to cover that story, right?

A. Oh, yes. I was happy to cover the story and I was happy to produce an enterprise piece that connected Martin Luther King to Barack Obama in the nation's history.

Q. Were you ever told that the stories you were pitching were not a good fit for the Post?

A. They published many of the stories in enterprise, so the answer is no. I mean --

Q. You were never told that your stories, stories you were pitching that were not a good fit?

A. Are you talking about my --

Q. My question was --

A. My evaluation.

Q. My question was were you ever told that stories that you were pitching for the Post were not a good fit for that paper?

A. Can you tell me who might have said that?

Q. Ms. Gotthelf and Mr. Greenfield?

Page 105

FENNER

and be dismissive of stories that I had proposed to get into the paper.

Q. Did you receive a written warning after you got this 2008 performance evaluation?

A. I was given a final written warning, and at the same time, I was presented with this evaluation.

Q. I am going to show you that document that has been marked as Fenner Exhibit 6. It is NYPFL 501.

(Exhibit 6, document Bates stamped NYPFL 501 marked for identification, as of this date.)

Q. This is that final written warning?

A. Yes.

Q. Did you disagree or agree with the criticisms in this written warning?

A. I strongly disagreed with it.

Q. And did you write anything in response to this warning?

A. During that meeting?

Q. Or following it?

A. During that meeting, I had told

Page 106

FENNER

Michelle Gotthelf and Amy Scialdone that I was being set up and when Amy asked me did I really wanted to be at the paper, I realized that they were out to get me. So making any comment on this paper, on this sheet of paper would have been pointless.

Q. Did you tell them at that meeting that you believed that you were being set up because you are African American?

A. Yes.

Q. What did you say?

A. I said to them, I'm being set up.

Q. Did you say the words, "because I'm African American"?

A. I didn't say the words at that time because I'm African American.

Q. You said "I'm being set up"?

A. Yes. My jaw dropped and hit the table.

Q. But you did not tell them that you believed that the reason you were being set up was discrimination on the basis of race, is that correct?

A. I was trying to wrap my mind about

Page 107

FENNER

what had happened and the fact that this --

Q. My question, Mr. Fenner --

A. I'm not finished talking.

Q. I'm not asking you about what you are trying to wrap your mind around. I am asking you, did you tell them that you believed, at that meeting, that you believed that the reason you were being set up was race?

A. I didn't say to them I'm being set up because I'm black. I said to them, I'm being set up.

Q. Did you do anything, after receiving this written warning, did you do anything to change your performance, improving, to respond to these criticisms?

A. Despite the fact that I received this review, I went on to write solid, great pieces of journalism for the paper.

Q. Did you change anything in response to this written warning?

A. Did I change what?

Q. The way you did your job?

A. I continued to work hard just like

Page 108

FENNER

I had did during the first year of my employment at the New York Post.

Q. Did you change anything about the way you did your job from the way you were doing it before you got the written warning?

MR. THOMPSON: Objection.

A. Can you repeat the question.

Q. Did you change anything about the way you did the job from the way you were doing it before you got the written warning?

A. I was doing solid work before I got the warning and despite the fact that I felt that this review, this evaluation was discriminatory, I did -- I continued to do good work at the paper.

Q. So you can't think of anything can't think of anything that you changed about the way you did your work?

A. Because of this?

Q. Yes.

A. I'm always working to improve myself. That's a tenet that I use.

Q. But you can't think of anything that you did to change the way you did your

Page 109

FENNER

job in response to this written warning, correct?

A. I felt this review was unfair.

Q. And is my statement correct --

A. So to do something in response to something that was unfair --

Q. OK, so because you thought the review was unfair, the warning was unfair, you decided you would -- you were not going to change the way you did your job?

MR. THOMPSON: Objection.

A. That's not true. That's not what I am saying.

Q. That is what it sounds like you're saying.

MR. THOMPSON: Objection.

A. The answer is no.

Q. The answer is no about what?

A. Your question was that I wasn't going to continue to do anything about the way I did my job. Is that right?

Q. We are arguing with each other. Simple question.

In response to receiving this



Page 110

FENNER

1 warning, did you change the way you did your  
2 job, yes or no?

3 A. I continued to work hard. And if  
4 you're -- I'm always working to improve  
5 myself, so I'm not exactly sure what you're  
6 asking me.

7 Q. Mr. Fenner, it is -- the question  
8 is simple and it is clear. In response to  
9 receiving this warning, did you change the  
10 way you did your job?

11 You need to provide an answer in  
12 your deposition for the record. Is the  
13 answer yes, or no?

14 A. The answer is I am -- yes, I am  
15 always working to improve myself, but this  
16 document, this review was shocking to me. It  
17 made me -- I couldn't believe I was  
18 getting -- this -- I found it discriminatory.

19 Q. Mr. Fenner, is the answer yes or  
20 no?

21 A. All I can tell you is I worked  
22 hard. It is not -- if you are asking me if  
23 this document caused me to work harder,  
24 caused me to -- I realized that --  
25

Page 111

FENNER

1 Q. I am asking you, did it cause you  
2 to work harder or change the way you did your  
3 job?

4 A. It made me pause because I realized  
5 I was being set up for termination, so yes is  
6 the answer.

7 Q. Did it change the way you did your  
8 job?

9 A. Yes.

10 MR. THOMPSON: Objection.

11 Q. How so?

12 A. It made me pause because I realized  
13 that there was a picture being created for my  
14 termination.

15 Q. So what did you do differently  
16 after receiving the warning?

17 A. I had to triple-cross my Is and my  
18 Ts, I had to watch my back, I had to watch  
19 what Dan Greenfield and Michelle Gotthelf  
20 were saying. I had to watch my back. That's  
21 what happened.

22 Q. Did you pitch a story about a  
23 Harlem car dealership that Mr. Greenfield  
24 told you not to write unless you could  
25

Page 112

FENNER

1 advance the story forward?

2 A. Yes.

3 Q. And did you pitch a story that had  
4 been covered by the New York Times earlier?

5 A. The New York Times had written a  
6 story, that --

7 Q. It is a yes or no question. Did  
8 you pitch a story that had been covered by  
9 the New York Times?

10 A. The New York Times had also  
11 written -- had written the story earlier in  
12 the year.

13 Q. And they had cited celebrities that  
14 had purchased cars there?

15 A. No, it was a preview. The place  
16 hadn't opened up at that point.

17 Q. Did Mr. Greenfield tell you that  
18 the story you were mentioning mentions the  
19 same celebrities as the New York Times story?

20 A. Yes, because they had purchased  
21 cars at the dealership. Those facts didn't  
22 change.

23 Q. Did the story that you pitched  
24 advance the story in Mr. Greenfield's view?  
25

Page 113

FENNER

1 MR. THOMPSON: Objection.

2 A. He didn't want to go with the  
3 story.

4 Q. He didn't want to go with the story  
5 that you pitched?

6 A. That I wrote.

7 Q. Because you -- that you wrote  
8 because it did not advance the story,  
9 correct?

10 A. He felt that it didn't advance the  
11 story.

12 Q. Did you think that what you had  
13 submitted, you had advanced the story?

14 A. The story was about the -- that  
15 this place had opened up and people were  
16 coming in, and it was the mood, the place of  
17 business was actually happening.

18 Q. Other than that, did you think you  
19 had advanced the story?

20 A. It was a good story.

21 Q. Did you think you had advanced it?

22 A. I thought it was a good story and  
23 we could have gone with it in the paper.

24 Q. But you got Mr. Greenfield's point  
25



Page 114

1 FENNER  
2 that it did not advance it beyond what the  
3 times had published?  
4 A. I was waiting for him to offer up  
5 suggestions so we could work and collaborate  
6 to get in the paper.  
7 Q. Did you have go back to try to  
8 advance the story, represent it with a new  
9 angle?  
10 A. I did.  
11 Q. Did you ever get that angle? And  
12 publish the story?  
13 A. The paper publishes the story. I  
14 write the story.  
15 Q. Did you ever get that angle and was  
16 that story ever published?  
17 A. The story was not published.  
18 Q. Did you ever get that angle?  
19 A. I would need to look at a copy of  
20 the story.  
21 Q. As best as you can recall, did you  
22 get that angle?  
23 A. It would refresh my recollection if  
24 I read the story.  
25 Q. As you sit here today, do you

Page 116

1 FENNER  
2 second occasion, to see if there was any high  
3 profile people buying the car that day.  
4 Q. And did you get that story?  
5 A. If I had a copy of the story in  
6 front of me, it would refresh my  
7 recollection.  
8 Q. The story wasn't published, right?  
9 A. That's correct.  
10 Q. Was Mr. Greenfield's reaction to  
11 your story, to this story that you wrote, do  
12 you believe that that was based on race  
13 discrimination?  
14 A. Mr. Greenfield was on a campaign to  
15 get me out the paper.  
16 Q. Any specific information, sir,  
17 relating to the conversations you had with  
18 Mr. Greenfield about this Harlem dealership  
19 story that causes you to believe or conclude  
20 that his decision was based on race  
21 discrimination?  
22 A. Yes, because he used this fact in  
23 my evaluation which was then used against me  
24 as a tool -- he was trying to paint me as  
25 incompetent.

Page 115

1 FENNER  
2 recall any angle that you could obtain to  
3 advance the story?  
4 A. I can't answer your question --  
5 Q. Because you don't recall?  
6 A. Because I would need to read the  
7 story.  
8 Q. Did you feel that Mr. Greenfield's  
9 criticism of what you presented in that  
10 instance was unfair?  
11 A. Yes, he was blocking the story to  
12 getting in the paper.  
13 Q. Did you think it was unfair?  
14 A. Yes. Everything that he did during  
15 that time to me was blocking my success at  
16 the paper.  
17 Q. Did Mr. Greenfield suggest to you  
18 to go back to the dealership and be there  
19 while a celebrity was buying a car?  
20 A. You can't manufacture a celebrity  
21 walking in a car dealership --  
22 Q. Was that suggestion made to you?  
23 A. I believe I did return to the  
24 dealership to see if we could see, at the  
25 time we had visited the dealership on the

Page 117

1 FENNER  
2 Q. So do you know of any acts that  
3 occurred at the time this story was being  
4 pitched and written that demonstrate that  
5 Mr. Greenfield was motivated by race?  
6 A. Repeat the question.  
7 Q. Were there any facts that you know  
8 of that occurred at the time the story was  
9 being pitched and written that demonstrate  
10 that Mr. Greenfield was motivated by race?  
11 A. At the time?  
12 Q. Yes.  
13 A. I can't -- at the time, I can't  
14 discern that, but what I do now know or what  
15 I knew then when I saw it in my evaluation  
16 cast --  
17 Q. My question was at the time.  
18 A. No, I don't believe so.  
19 MR. THOMPSON: Mark, what time do  
20 you want to break for lunch? It is 1  
21 now.  
22 MR. LERNER: Let's go about another  
23 ten minutes.  
24 MR. THOMPSON: Let's take a break.  
25 MR. LERNER: I'm almost done with

Page 118

1 FENNER  
2 this section.  
3 MR. THOMPSON: Ten minutes is too  
4 long. Ten minutes -- I mean, it is 1  
5 o'clock.  
6 MR. LERNER: Ken, you asked me what  
7 time I would like to break and I said  
8 about ten more minutes.  
9 MR. THOMPSON: And I would like to  
10 break now. What time -- I mean, we have  
11 been here since 9:30, since 9:15. It is  
12 1 o'clock. I think it is time to take a  
13 break.  
14 MR. LERNER: Ken, I am asking you  
15 if I can go ten more minutes.  
16 MR. THOMPSON: Try to do it before  
17 ten minutes, Mark. I think it is unfair  
18 to have the witness here, to have the  
19 witness here who hasn't eaten anything  
20 since this morning.  
21 MR. LERNER: All right.  
22 Q. Mr. Fenner, did there come a time  
23 in 2008 when your editors told you that you  
24 would be working as a street reporter --  
25 A. No.

Page 120

1 FENNER  
2 title and my work was always as a senior  
3 reporter at the paper.  
4 Q. And were you ever advised in a  
5 meeting that included Ms. Scialdone that your  
6 duties would be those of a street reporter?  
7 A. Was it written down?  
8 Q. That's -- that is my question to  
9 you?  
10 A. It wasn't written down. Not that I  
11 recall.  
12 Q. What do you mean it wasn't written  
13 down? Did it happen?  
14 A. You are presenting me with these  
15 evaluations and a final warning. And these  
16 are all comments that they made about my  
17 work. And what I am saying, the comment that  
18 you are referring to is not included in these  
19 papers.  
20 Q. Was it -- were you verbally told  
21 that your -- that your duties would be as a  
22 street reporter?  
23 A. Not that I recall, no.  
24 Q. Was your job description ever  
25 changed while you were at the Post? I don't

Page 119

1 FENNER  
2 Q. -- as a runner?  
3 A. No.  
4 Q. Did that conversation ever occur?  
5 A. No.  
6 Q. Did you ever sit down with  
7 Ms. Scialdone of HR and one of your editors  
8 and have your -- have a discussion in which  
9 your duties were revised to be a runner as  
10 opposed to a general assignment reporter?  
11 A. Which editor?  
12 Q. Mr. Greenfield or Ms. Gotthelf?  
13 A. Which one?  
14 Q. Well, how many meetings did you  
15 have with Ms. Scialdone during the course of  
16 your employment?  
17 A. At the time that I can recall, I  
18 had two.  
19 Q. When were those two meetings?  
20 A. When I had the two performance  
21 evaluations.  
22 Q. Do you recall any other meetings in  
23 with Ms. Scialdone in which your duties as a  
24 reporter were discussed?  
25 A. I can't recall that meeting. My

Page 121

1 FENNER  
2 mean your job title. I mean the description  
3 of your duties as described to you by your  
4 supervisors?  
5 A. After I complained about the racist  
6 criterium that was published in February of  
7 2009, I was eventually banned from the  
8 newsroom by Michelle Gotthelf and Dan  
9 Greenfield. And during that time, they  
10 changed my schedule.  
11 Q. You mean your work schedule?  
12 A. That's correct.  
13 Q. Your hours?  
14 A. That's correct.  
15 Q. Did they make any other changes?  
16 A. And in particular, on my Thursday  
17 shift, they changed those hours from 2 to 10,  
18 then told me that they were doing things  
19 differently in the newsroom and they wanted  
20 me to be a team player and pitch in for about  
21 a month until they could get someone else to  
22 cover that position. That position is a  
23 junior position for a junior reporter.  
24 Q. So one day a week, they gave you a  
25 later shift, right?

Page 122

1 FENNER  
 2 A. On Thursday.  
 3 Q. Did they move your other shifts  
 4 to -- from 11 to 7 to 9 to 5?  
 5 A. That's correct.  
 6 Q. And did you -- were you agreeable  
 7 to the shift change from 11 to 7 to 9 to 5?  
 8 A. No.  
 9 Q. Did you tell them you didn't want  
 10 to do that?  
 11 A. I told them that the schedule I had  
 12 was working great for me. I have a teenage  
 13 daughter who I am getting ready for college  
 14 and I use my time in the evenings to get her  
 15 ready and prep her for college life.  
 16 Q. Well, wasn't it -- didn't it assist  
 17 you to get home at 5 p.m. or have your shift  
 18 end at 5 p.m. as opposed to 7 p.m. which  
 19 worked four out of your five days when they  
 20 made that change?  
 21 A. If you are a New York journalist,  
 22 you are never, ever, ever work 9 to 5.  
 23 Q. So are you saying that that wasn't  
 24 your schedule?  
 25 A. What I am saying is there is always

Page 124

1 FENNER  
 2 A. I asked them if they had hired  
 3 someone else for the junior position, if they  
 4 had found someone.  
 5 Q. What did they say?  
 6 A. I can't recall at this time exactly  
 7 what they said, but I remained working in  
 8 that position from May until my date of  
 9 termination.  
 10 Q. Other than -- did you -- did you  
 11 have any other conversations with them about  
 12 that shift other than asking them if they had  
 13 hired somebody?  
 14 A. I told them it was outrageous that  
 15 they were banning me from the newsroom. I  
 16 felt like I was being treated differently  
 17 than my white colleagues at the paper. I was  
 18 told I needed to call in and get permission  
 19 to enter the NewsCorp. building.  
 20 Q. You didn't tell Dan Greenfield and  
 21 Michelle Gotthelf that you believed you were  
 22 being treated differently from white  
 23 reporters, correct? You didn't say that to  
 24 them, right?  
 25 A. I couldn't -- I told them I thought

Page 123

1 FENNER  
 2 demands that you have to tackle. There is  
 3 always an extended assignment, there is  
 4 always breaking news and if you want to be a  
 5 part of that team, you have to be highly  
 6 motivated, you have to be tenacious and you  
 7 have to be relentless in getting those  
 8 stories, I worked -- I never, I never ever  
 9 finished a shift at 5. That's deadline.  
 10 Q. Did you, after you performed the 2  
 11 to 10 shift for a month, did you tell  
 12 Michelle Gotthelf or Dan Greenfield that you  
 13 wanted to be taken off that shift?  
 14 A. Yes.  
 15 Q. Did you put that in writing?  
 16 A. Did I put it in writing?  
 17 Q. Yes.  
 18 A. We had a meeting where they  
 19 presented me with a change. And I verbally  
 20 told them -- I verbally told them my  
 21 objections to it.  
 22 Q. After doing it for four or five  
 23 weeks, did you then go back and say this is  
 24 not working out, I want to be -- I want to go  
 25 back to an earlier shift?

Page 125

1 FENNER  
 2 it was unfair.  
 3 Q. You were sent out in the street?  
 4 A. I was being banned from the  
 5 newsroom.  
 6 Q. But you didn't say I think you're  
 7 doing this to me because I'm black and you're  
 8 not doing it to my white colleagues? You  
 9 didn't say that, right?  
 10 A. I can't recall if I said that or  
 11 not at the time.  
 12 Q. You -- you never said that to Dan  
 13 Greenfield or Michelle Gotthelf?  
 14 A. But I did raise my objections to  
 15 them about getting banned from the newsroom.  
 16 Q. OK, but you didn't say -- you  
 17 didn't raise your objection and say you are  
 18 doing this to me because of my race, correct?  
 19 A. I can't recall exactly everything  
 20 that I said and what transpired in that  
 21 meeting. But I raised my objections to them.  
 22 Q. You never put in any complaint or  
 23 EEOC charge or your affidavit that you said  
 24 that to them, right? You have never alleged  
 25 in this lawsuit that you told Dan Greenfield

Page 130

FENNER

A. I believe I did.

Q. Is this written in your handwriting?

A. Yes.

Q. Did you write it yourself?

A. Yes.

Q. What rating did you give yourself?

A. A 5.

Q. That's the highest rating available?

A. That's right.

Q. And in the overall performance summary section, you wrote, "Fenner needs to sharpen his time management skills so he can produce more exciting, hard-hitting enterprise stories." Do you see that?

A. I do.

Q. And did you believe that to be correct at the time that you wrote this?

A. Yes.

Q. So if your editors believed that you needed to produce more hard-hitting enterprise stories, you would agree with that criticism, correct?

Page 131

FENNER

A. I had produced --

Q. Mr. Fenner, would you agree with that criticism, that you needed to produce more hard-hitting enterprise stories?

A. That was my job, to produce hard-hitting enterprise stories.

Q. Mr. Fenner, if your editors had that criticism of you, you agreed with it? You wrote it in this self-evaluation, right?

A. I did.

Q. You also listed in the self-evaluation three stories that you believed represented your overall achievements at the Post during this review period; a story about the appointment of Archbishop Dolan, an interview of a passenger that came out of the plane in a landed in the Hudson River, and the story you did on the church bus that went to watch the Obama inauguration, right?

A. Yes.

Q. Those are the three stories that you listed under "overall achievements," right?

Page 132

FENNER

A. That's correct.

Q. And in citing them, you were seeking to indicate what you thought were the highlights of your year, fiscal year 2009 working for the Post, right?

A. Yes, this was representative of my work.

Q. Well, it was representative of your best work, right?

A. Some of my best work.

Q. The story about the gentleman who was on the plane that landed in the Hudson River, that was an interview of a guy who came out of the water in his underwear, right?

A. Correct.

Q. Isn't it true that both the New York Times and the Associated Press interviewed the same guy on the same day as you interviewed him?

A. They probably did.

Q. So there was nothing unique or extraordinary about that story, right?

A. It was a great story. It was

Page 133

FENNER

unique. That's why I put it on my self-evaluation. To get that story --

Q. Why was it unique if the New York Times interviewed the same individual and the Associated Press interviewed the same individual?

A. It was unique because all of New York media was there. Everyone was trying to get that story. I don't know who else got it, but it was my job to get it for the New York Post.

Q. The coverage of the bus ride to Washington DC to watch the Obama inauguration, that was a single story, correct?

A. That was a sidebar that was part of the inauguration package that the Post produced when Obama took the office, the oath of office. And when I had -- when I was working on the Miracle on the Hudson story, I was the lead reporter for the paper. That was the day when the airplane crashed into the ocean and Michelle Gottself called my name across the newsroom and dispatched me as

Page 134

FENNER

the first reporter. It was her knee-jerk reaction to make sure she could send her best reporter to this big event that happened in New York.

Q. But you did not write the news story on the "Miracle on the Hudson," correct?

A. I worked with many -- there was probably like 15 to 20 reporters who worked on that story. I don't have the exact number --

Q. Your byline went on the story of the interview of one of the passengers, right?

MR. THOMPSON: Mr. Lerner, please don't interrupt the witness when he is testifying and trying to answer.

Q. Correct?

A. What was your question?

Q. Your byline went on the story of the interview of one passenger, right?

A. No, I believe my byline was on the main body of a --

Q. You believe it was?

Page 135

FENNER

A. I don't have it in front of me, but I believe my byline was the lead byline in the story.

Q. If we looked at the paper's archives, we could determine whether or not your byline was on there, right?

A. I guess we could.

Q. What did you report with respect to your work that was other than the interview of the guy who came out of the water in his underwear?

A. I was writing about the emergency services -- the emergency -- the first responders who were rushing to save the people who were trapped on the plane as it was slowly submerging into the icy waters of the Hudson.

Q. Did you get any interviews of any of those emergency responders?

A. I got many interviews and I filled my notebook up that day.

Q. Did you interview any of the emergency responders?

A. If I had the story in front of me,

Page 136

FENNER

it would refresh my recollection.

Q. You don't have a recollection now of having done that though, right?

A. If I interviewed any of the first responders?

Q. Yes.

A. I interviewed probably more than 20 people that day, so.

Q. Did you interview the ferry boat captain that was first on the scene?

A. I can't recall exactly -- I can't recall if I interviewed the ferry boat captain.

Q. How many other reporters were sent by the New York Post to the scene that day?

A. Many.

Q. A dozen?

A. I don't have an exact number.

Q. Could be a dozen?

A. I would assume that it was all hands on deck.

Q. And what does that mean in terms of a number?

A. That means this, this was the --

Page 137

FENNER

Q. What does that mean in terms of the number of reporters?

A. That people would have been just rushing to the scene.

Q. How many reporters is all hands on deck?

A. I don't have an exact number for you.

Q. Is it more than a dozen?

A. It could be.

Q. Is it more than 20?

A. It could be.

Q. In the story about the bus ride to Obama's inauguration, you met a church group at -- in the wee hours of the morning, correct, about 2 o'clock in the morning?

A. That sounds right. It was midnight.

Q. And you rode on the bus -- and the buses departed New York and drove to Washington DC to participate in the Obama inauguration events, correct?

A. Correct.

Q. And when did you file the story on



Page 138

FENNER

that bus ride?

A. Later on that afternoon. It was -- I can't recall the exact hour. But there were like 2 or 3 million people packed into that area.

Q. What was extraordinary about your reporting of that bus ride that caused you to list it as one of your main achievements for 2009?

A. We were able to show how New Yorkers who were connected to King were able to see King -- were able to see Obama become president. There were people on that bus who were members of the congregation at the time that King was assassinated and they -- they were making almost this sacred pilgrimage to DC to connect King's dream and the actuality of the United States had voted in Barack Obama as president.

Q. Did you cover any other aspects of the Obama inauguration?

A. My job was that sidebar I just mentioned, the Canaan congregation from Harlem, being one of scores of buses that

Page 139

FENNER

made this massive caravan, and this bus, at a unique place in American history.

Q. You also indicated in this self-evaluation your coverage of Archbishop Dolan's arranging for a family to adopt an severely handicapped child. Did you consider that to be one of your best achievements in that year?

A. That would rank as one of the best achievements I have had as a journalist in my career. During this trip, this is when I was treated to a racially --

Q. Mr. Fenner --

A. -- hostile tirade.

Q. Mr. Fenner, the question was, the question was, was that one of your best achievements?

A. Yes.

Q. OK. Which story are you referring to with respect to Dolan? Is it the story about the adoption of the handicapped child?

A. Specifically, the entire package was top notch.

Q. How did you obtain the interview?

Page 140

FENNER

A. I wasn't finished.

Q. The piece about him -- you answered me. It was the entire package.

A. I was trying to finish my sentence.

Q. I need to move. I have a lot of questions to get through.

MR. THOMPSON: You may have a lot of questions --

MR. LERNER: We are going to call the court to get more time.

MR. THOMPSON: You can call the court. You wanted to get more time before you started this deposition. You have repeatedly interrupted Mr. Fenner. You have to let him answer your questions.

MR. LERNER: I need to have him answer the questions.

MR. THOMPSON: He is answering your questions, Mr. Lerner. Let him.

Q. Do you recall the question?

A. This piece that you are referring to showed Dolan to be a miracle worker, the fact that this woman was pro life and needed

Page 141

FENNER

the bishop's hand to help her find a safe home for her disabled child who suffered many, many disabilities.

Q. Mr. Fenner, the question was, did you consider this to be one of your best achievements in that year? The answer is either yes or no. OK.

How did you get the interview of Archbishop Dolan?

A. Which one? I did many.

Q. The one -- your first interview of Dolan?

A. I interviewed him at the parish.

Q. Were you assigned by your editors to go to Milwaukee to try to get that interview?

A. I was dispatched there.

Q. You were dispatched there. Was the interview set up before you left?

A. No.

Q. So you didn't have a source within the parish that enabled you to get that interview assignment, right?

A. I developed a source. That's why I



Page 142

FENNER

was able to come up with the miracle story.

Q. And how did you get that interview once you were out there in Milwaukee?

A. I asked if there were any recent articles Cord covered in the Catholic Weekly that mentioned Dolan and what kind of work he did.

Q. Who did you ask that of?

A. I was asking a source in Milwaukee.

Q. Did they supply you with an article about his arranging of the adoption of the child?

A. No.

Q. So how did asking that question get you the interview?

A. We had a back and forth. We were talking and one question led to another.

Q. Did somebody come up with the idea at the Post, come up with the idea of providing, giving Dolan some gifts?

A. That was -- I made three trips to Milwaukee on behalf of the New York Post and I think this was after -- at some point, we were bringing him Yankee and -- Yankee items

Page 143

FENNER

and New York items.

Q. Whose idea was it to bring him those items?

A. I'm not sure. You're asking if it was the editor's or mine, is that your question?

Q. Yes.

A. I guess we collaborated and came up with that suggestion.

Q. And you regard the Dolan stories to be some of your -- well, withdrawn.

Do you regard those assignments as good assignments?

A. It was really difficult for me to do my best work because what had happened to me during that trip. Dan Greenfield --

Q. Were they good assignments, sir?

A. Dan Greenfield hit me --

MR. LIPPNER: Mark, let's call the court.

A. -- with a whole load of curses.

Q. Mr. Fenner, excuse me. We are going to need to call the court.

MR. THOMPSON: You can call the

Page 144

FENNER

court.

MR. LIPPNER: Off the record.

MR. LERNER: Let's go off the record.

THE VIDEOGRAPHER: The time is 2:30 p.m. We are off the record.

(Exhibit 8, document Bates stamped NYPFL 261 marked for identification, as of this date.)

(Exhibit 9, document Bates stamped NYPFL 248 marked for identification, as of this date.)

(Recess)

THE VIDEOGRAPHER: The time is 3 p.m., we are on the record.

Q. Mr. Fenner, did you consider the assignment to cover the appointment of Timothy Dolan to be -- the Archbishop of New York, to be an assignment you were glad to receive?

A. Yes.

Q. It was an important story for New York, right?

A. That is correct.

Page 145

FENNER

Q. Were you -- did you consider the story of the bus trip that went to Washington DC an important story?

A. Yes.

Q. You were glad to have gotten that assignment?

A. Yes.

Q. Do you recall being reprimanded by Dan Greenfield on two occasions for still being in Teaneck, where you reside, in the morning after being instructed to go to another location?

A. Is that what this e-mail is?

Q. Exhibits 8 and 9, which are NYPFL 261 and 248 relate to such incidents.

A. Yes.

Q. And in one of the incidents, you had spoken to him and he had directed you to Brookdale Hospital in Brooklyn for a story, and when he called you sometime after that, you were still in Teaneck and you told him that, correct?

A. I believe so, yes.

Q. And you told him that you had had

Page 146	Page 147
<p>1 FENNER</p> <p>2 to run an errand before heading into the city</p> <p>3 and you felt that you told him the truth</p> <p>4 about that when he called you and you were</p> <p>5 still in Teaneck.</p> <p>6 On the other occasion, you had</p> <p>7 been overnighted to Lanoka Harbor and you</p> <p>8 called in that morning, you were in Teaneck</p> <p>9 and he called you back a half an hour later</p> <p>10 and you were still in Teaneck, correct?</p> <p>11 A. This is true.</p> <p>12 Q. And Dan was annoyed at you in both</p> <p>13 instances and let you know that, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And those incidents were in June</p> <p>16 and August of 2009, right?</p> <p>17 A. Correct.</p> <p>18 Q. In the case of the August 2009</p> <p>19 incident, you said that you were getting gas,</p> <p>20 correct?</p> <p>21 A. Yes, I might -- yes, I mentioned</p> <p>22 that during the conversation.</p> <p>23 Q. I would like to show you a document</p> <p>24 called APA fiscal year 2009, it is NYPFL 472</p> <p>25 through 475, and it will be marked as Fenner</p>	<p>1 FENNER</p> <p>2 Exhibit 10.</p> <p>3 (Exhibit 10, document Bates stamped</p> <p>4 NYPFL 472 through 475 marked for</p> <p>5 identification, as of this date.)</p> <p>6 Q. Do you recognize this document,</p> <p>7 sir?</p> <p>8 A. Yes.</p> <p>9 Q. Is this the APA that Michelle</p> <p>10 Gotthelf and Dan Greenfield gave you in</p> <p>11 September of 2009?</p> <p>12 A. Yes.</p> <p>13 Q. Is that your signature on the last</p> <p>14 page?</p> <p>15 A. Yes.</p> <p>16 Q. And you did not respond to it with</p> <p>17 employee comments, correct? At least no</p> <p>18 written comments in the employee comment</p> <p>19 section on the last page, correct?</p> <p>20 A. No.</p> <p>21 Q. So it is correct that you did not</p> <p>22 write anything in that section, right?</p> <p>23 A. That's correct.</p> <p>24 Q. And did you read this APA when you</p> <p>25 received it?</p>
Page 148	Page 149
<p>1 FENNER</p> <p>2 A. I did read it.</p> <p>3 Q. It rated you a 1 which is the</p> <p>4 lowest possible rating that you can receive</p> <p>5 which stands for unacceptable, does not meet</p> <p>6 standards, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Do you allege that this performance</p> <p>9 evaluation was a negative performance</p> <p>10 evaluation because you are African American?</p> <p>11 A. Yes.</p> <p>12 Q. What is the basis of that</p> <p>13 allegation?</p> <p>14 A. Because the points in here are</p> <p>15 false and untrue.</p> <p>16 Q. And specifically what is false and</p> <p>17 untrue?</p> <p>18 A. It says he -- "but continues to</p> <p>19 under perform at this level and is working as</p> <p>20 a street runner at best."</p> <p>21 Q. So you would agree you were hired</p> <p>22 as a senior reporter, right?</p> <p>23 A. Yes.</p> <p>24 Q. And do you -- you believe that you</p> <p>25 were not under-performing as a senior</p>	<p>1 FENNER</p> <p>2 reporter?</p> <p>3 A. I did great work that year.</p> <p>4 Q. Were you -- go ahead.</p> <p>5 A. I could enumerate many of the</p> <p>6 stories that I worked on if you want.</p> <p>7 Q. What are the stories that you feel</p> <p>8 highlight yourself as a reporter for the Post</p> <p>9 in the 2009?</p> <p>10 A. During the course of the year, I</p> <p>11 got an exclusive interview with William</p> <p>12 Ayers, who was one of the founders of the</p> <p>13 Weather Underground and it was linked to</p> <p>14 Barack Obama as a friend or associate at --</p> <p>15 during the Democratic nomination.</p> <p>16 Also during that time, Hillary</p> <p>17 Clinton was on the record for talking about a</p> <p>18 mom in Ohio who was pregnant, she was</p> <p>19 pregnant, a woman who was pregnant and she</p> <p>20 had lost her baby because she didn't have</p> <p>21 healthcare. I was able to obtain an</p> <p>22 interview with her.</p> <p>23 Gregg Birnbaum, who is an editor on</p> <p>24 the desk, he covers the political, politics</p> <p>25 for the paper, said I was doing good work and</p>

<p style="text-align: right;">Page 150</p> <p>1 FENNER</p> <p>2 knew I was doing good work on that</p> <p>3 assignment.</p> <p>4 That was also the year I wrote the</p> <p>5 inauguration story, the sidebar piece. It</p> <p>6 was also the year in which I wrote about</p> <p>7 Bishop Dolan coming to New York as a next</p> <p>8 bishop.</p> <p>9 I wrote a piece in November of '08</p> <p>10 when Barack Obama had won the nomination, and</p> <p>11 I was able to find some people who were at,</p> <p>12 in Washington DC during the time King had</p> <p>13 delivered the "I Have The Dream" speech and</p> <p>14 it was also watching on television in Harlem</p> <p>15 Barack Obama make this historic move by</p> <p>16 winning the Democratic nomination. And there</p> <p>17 is other stories, but those are several of</p> <p>18 them.</p> <p>19 Q. What was the piece that you wrote</p> <p>20 about William Ayers?</p> <p>21 A. He was -- I was in Chicago and</p> <p>22 William Ayers was the center of the story and</p> <p>23 people were trying to find out if Barack</p> <p>24 Obama, who was then running for the</p> <p>25 presidency, was a friend of William Ayers who</p>	<p style="text-align: right;">Page 151</p> <p>1 FENNER</p> <p>2 was one of the founders of the Weather</p> <p>3 Underground. And in addition to that, there</p> <p>4 was another story --</p> <p>5 Q. Did you break that story or had it</p> <p>6 been -- the connection between Obama and the</p> <p>7 Weather Underground been already reported on?</p> <p>8 A. I didn't break the story, but I was</p> <p>9 able to get William Ayers to speak while the</p> <p>10 national media was focused on this issue.</p> <p>11 Q. Were any of the stories that you</p> <p>12 listed as in your 2009 year, were any of them</p> <p>13 stories in which you broke news?</p> <p>14 A. To have William Ayers speak on the</p> <p>15 record is to break news. To get the widow</p> <p>16 of -- the widower of a woman who died in Ohio</p> <p>17 who had no health insurance talk for the</p> <p>18 first time about this issue was breaking</p> <p>19 news.</p> <p>20 Q. These are, aren't these follow-ups</p> <p>21 to news stories, but not breaking news?</p> <p>22 A. William -- it was a follow-up, but</p> <p>23 it was also breaking news.</p> <p>24 Q. Because Ayers was interviewed?</p> <p>25 A. That's news.</p>
<p style="text-align: right;">Page 152</p> <p>1 FENNER</p> <p>2 Q. Did he say anything in that story</p> <p>3 that had previously been not revealed?</p> <p>4 A. I would need to read the story and</p> <p>5 the story that was published didn't contain</p> <p>6 all the facts from the interview that I</p> <p>7 obtained with William Ayers.</p> <p>8 Q. What is the definition of</p> <p>9 breaking -- of when a reporter breaks news?</p> <p>10 What does that mean, to break news?</p> <p>11 A. You reveal new information about an</p> <p>12 issue.</p> <p>13 Q. Well, is merely revealing new</p> <p>14 information, is that necessarily breaking the</p> <p>15 news? Doesn't breaking news, breaking a news</p> <p>16 story mean more than that?</p> <p>17 MR. THOMPSON: Objection.</p> <p>18 Q. It means bringing something to the</p> <p>19 public attention that the public didn't know</p> <p>20 about previously?</p> <p>21 A. If the subject of the story is</p> <p>22 speaking about an issue for the first time,</p> <p>23 that would be breaking news.</p> <p>24 Q. Was the trip to DC on the bus, was</p> <p>25 that breaking news?</p>	<p style="text-align: right;">Page 153</p> <p>1 FENNER</p> <p>2 A. That was an enterprise story.</p> <p>3 Q. It was not breaking news though,</p> <p>4 was it? It was a sidebar, right?</p> <p>5 A. It was news. We were revealing and</p> <p>6 telling the story about a community of people</p> <p>7 who live in New York.</p> <p>8 Q. Isn't it the fact that the Dolan</p> <p>9 story involving the arrangement of the</p> <p>10 adoption of a disabled child had been written</p> <p>11 on in a Catholic online publication?</p> <p>12 A. It could have been. I'm not</p> <p>13 exactly sure.</p> <p>14 Q. Isn't that where you got the story</p> <p>15 from?</p> <p>16 A. I had asked the source if there was</p> <p>17 a Catholic weekly that was tracking the</p> <p>18 efforts of Bishop Dolan. I didn't get the</p> <p>19 information from the online. I had to locate</p> <p>20 this woman, find her, spend hours to trust me</p> <p>21 with her story.</p> <p>22 Q. The fact of that adoption that</p> <p>23 Dolan arranged, that adoption was already</p> <p>24 online by the time you wrote the story for</p> <p>25 the Post, correct?</p>

Page 158	Page 159
<p>1 FENNER</p> <p>2 public, you are telling them new information.</p> <p>3 There is no reason not -- there isn't a</p> <p>4 reason to publish information that people</p> <p>5 don't need to know.</p> <p>6 Q. So if they need to know it, in your</p> <p>7 mind, it is breaking news?</p> <p>8 A. So there is two kinds of breaking</p> <p>9 news.</p> <p>10 Q. It is one kind of breaking news?</p> <p>11 A. No, I said -- there is breaks news</p> <p>12 like an emergency, and then there is also</p> <p>13 publishing new information. You wouldn't</p> <p>14 publish information if it had no merit to be</p> <p>15 printed.</p> <p>16 Q. Were you gratified to be assigned</p> <p>17 to the stories that you listed in 2009?</p> <p>18 A. Those were important stories, yes.</p> <p>19 Q. And they were good stories to get</p> <p>20 assigned as a reporter, right?</p> <p>21 A. Yes.</p> <p>22 Q. That includes the story about</p> <p>23 William Ayers, the story about Clinton</p> <p>24 talking about the woman who lost her baby,</p> <p>25 the piece on Obama's inauguration being</p>	<p>1 FENNER</p> <p>2 watched by people who had seen the "I Have A</p> <p>3 Dream" speech, right?</p> <p>4 A. Yes.</p> <p>5 Q. Do you -- do you, did you regard</p> <p>6 the assignment to cover the David Letterman</p> <p>7 affair to be a desirable assignment?</p> <p>8 A. That was a big story of the paper,</p> <p>9 yes.</p> <p>10 Q. What about the story about the</p> <p>11 Craig's list killer? That was a story --</p> <p>12 that was a story of national interest, right?</p> <p>13 A. Correct.</p> <p>14 Q. Were you assigned to cover that?</p> <p>15 A. Correct.</p> <p>16 Q. And were you pleased to be assigned</p> <p>17 that story?</p> <p>18 A. I was glad to be working for the</p> <p>19 paper and contributing on that piece.</p> <p>20 Q. You also could have had a story</p> <p>21 regarding an affair that led to the</p> <p>22 resignation of the head of the Red Cross. Do</p> <p>23 you recall that story?</p> <p>24 A. Yes.</p> <p>25 Q. That was a national -- story of</p>
Page 160	Page 161
<p>1 FENNER</p> <p>2 national interest, right?</p> <p>3 A. Yes.</p> <p>4 Q. Were you glad to be assigned to</p> <p>5 cover that story?</p> <p>6 A. Yes, it was a prominent story and I</p> <p>7 was glad to work on that story.</p> <p>8 Q. Did you cover a story involving</p> <p>9 David Copperfield, the illusionist?</p> <p>10 A. I did.</p> <p>11 Q. What was that story about?</p> <p>12 A. There was allegations that he had</p> <p>13 drugged a woman, I believe it was on a</p> <p>14 private island he owned, and he might have</p> <p>15 sexually abused this woman. And the goal of</p> <p>16 that story basically was to find the</p> <p>17 magician, David Copperfield.</p> <p>18 Q. And in fact, the cops found 2</p> <p>19 million dollars in a Las Vegas warehouse that</p> <p>20 he owned, right?</p> <p>21 A. That sounds familiar.</p> <p>22 Q. It was a warehouse that had like a</p> <p>23 concealed entrance, right?</p> <p>24 A. I was at that warehouse.</p> <p>25 Q. You traveled to Vegas to see that</p>	<p>1 FENNER</p> <p>2 warehouse?</p> <p>3 A. I saw that warehouse.</p> <p>4 Q. Were you satisfied to be assigned</p> <p>5 to cover that story?</p> <p>6 A. Yes.</p> <p>7 Q. You covered a story about A-Rod</p> <p>8 dating a stripper behind his wife's back. Do</p> <p>9 you recall that?</p> <p>10 A. I do.</p> <p>11 Q. That was a big story for New York,</p> <p>12 right?</p> <p>13 A. Very big.</p> <p>14 Q. A-Rod was already playing for the</p> <p>15 Yankees when you covered that?</p> <p>16 A. Correct.</p> <p>17 Q. Was that a good story for you to be</p> <p>18 assigned to when you were a reporter?</p> <p>19 A. Yes, it was.</p> <p>20 Q. You covered a story in which a</p> <p>21 woman stole the identity of an Ivy League</p> <p>22 graduate and pretended to be that person?</p> <p>23 A. Yes, that was a very difficult</p> <p>24 story and I did very well on it.</p> <p>25 Q. Do you consider that story to be a</p>

Page 162

FENNER

1 good story to have covered?

2 A. Yes, it was an important story for  
3 the paper and I was able to obtain an  
4 exclusive interview with Esther Reed while  
5 she was -- while she was under arrest by U.S.  
6 Marshals in a federal facility.

7 Q. You covered the stories about the  
8 murders of Jennifer Hudson's family members,  
9 right?

10 A. I did.

11 Q. That was a big national story as  
12 well, right?

13 A. Yes.

14 Q. Good story to be assigned to?

15 A. That was an important story, yes.

16 Q. You covered the arrest of Joba  
17 Chamberlain for DWI when he was out in  
18 Nebraska, correct?

19 A. Yes, I did great work on that  
20 story. We were able to find out that he had  
21 been drinking. He was at a strip club. And  
22 it caused him to fall into a fight with a  
23 patron because he was being taunted that the  
24 Red Sox were in the playoffs.  
25

Page 164

FENNER

1 story?

2 A. This young man had grown up in a  
3 housing project in the Bronx, and despite all  
4 the challenges in his life, was able to get  
5 to college, study engineering and make his  
6 family proud, and on his graduation day, he  
7 was killed at a party the day before he  
8 graduated.

9 Q. Were you gratified to be assigned  
10 to cover that story?

11 A. Yes. That was an important story  
12 for the paper. I was glad to contribute.

13 Q. You covered Plaxico Burress  
14 shooting himself in a nightclub, correct?

15 A. Yes, I was in Pittsburgh,  
16 Pennsylvania for that story.

17 Q. Was that a story of national  
18 interest?

19 A. Oh, yes.

20 Q. Was that a good story to be  
21 assigned to cover as a reporter?

22 A. It was another one of the front  
23 page stories that I covered during my tenure,  
24 yes.  
25

Page 163

FENNER

1 Q. Were you glad to get the assignment  
2 to cover that story?

3 A. I did great work on that story.  
4 Yes, I was glad to get that assignment. It  
5 was a difficult assignment and I was able to  
6 do good work on it.

7 Q. You covered a story involving a  
8 dispute between candidates in Alabama who  
9 argued over whether one of them should keep a  
10 contribution that they had gotten from  
11 Charles Rangel's fund raising. Do you recall  
12 that story?

13 A. Yes.

14 Q. Was that a good story for you to  
15 cover for New York?

16 A. That was an important story for the  
17 paper.

18 Q. Was it a good assignment for you?

19 A. Yes.

20 Q. Did you cover a story involving an  
21 engineer that was killed on the day of his  
22 graduation?

23 A. That was in Buffalo, New York, yes.

24 Q. Why was that story an important  
25

Page 165

FENNER

1 Q. You covered a story about the  
2 Olympic swimmer, Michael Phelps, getting  
3 reported for smoking marijuana?

4 A. Yes, that was in Baltimore,  
5 Maryland.

6 Q. That was a national scandal, right?

7 A. It could be worldwide.

8 Q. That was a good story to cover,  
9 right?

10 A. It was an important story for the  
11 paper and I was glad to contribute.

12 Q. You were glad to be assigned to  
13 cover that?

14 A. Yes.

15 Q. Do you recall pitching a story to  
16 Dan Greenfield about a man living in an old  
17 bank building?

18 A. Yes.

19 Q. What was Dan's reaction to that  
20 pitch?

21 A. He criticized me and shot it down.

22 Q. Why did he tell you he was shooting  
23 it down?

24 A. I recall he didn't like the story.  
25



Page 166

FENNER

Q. Do you recall him telling you that it was because you told him that it had been covered by New York Magazine a year ago?

A. That sounds familiar.

Q. Did you disagree with his opinion that the story should be -- that the paper should take a pass on that story?

A. I strongly disagreed with his opinion.

Q. And why, if the story had been covered by New York Magazine a year ago, why isn't Dan's -- why wouldn't Dan's position that the paper should pass on it be a justified one?

A. Because you could always find new angles, new developments, new changes in a story. And you don't know that unless you do the reporting and find out these new facts.

Q. Did you do any of that work and present him with the new facts before you pitched it?

A. He shot me down before I had a chance to dig and find out what we could.

Q. So that's a no?

Page 167

FENNER

A. What's the question?

Q. Did you dig up any new act facts to make the pitch more attractive?

A. No, I wasn't able to because I wasn't allowed to report on the story.

Q. But a lot of times, you dig up facts and angles to stories before you pitch them to your editors, right, to get them interested?

A. Sometimes.

Q. But you didn't do that in this case?

A. I needed the time to be freed up from other work that the paper would have had me to do. In order to do the reporting on that story, I would have to not do or not cover any other assignments that the paper might have been interested in.

Q. Why do you think that Dan's decision not to assign you to cover a story about a man living in a bank that had been written on by a magazine that's published in New York, why do you think that decision was the incorrect decision?

Page 168

FENNER

A. Because it would not have hurt to find out that if there was new information in it, new discoveries. You play with angles and you find new ways to get into a story.

Q. Dan is entitled to his opinion and judgment as a senior editor at the Post, isn't he?

A. He is and I'm also entitled to my opinion as a senior reporter, an experienced reporter who has a record of doing great work.

Q. But between the two of you, he is the ranking person in the paper, right?

A. He is the editor.

Q. The responsibility to make the decision falls on him, right?

A. Correct.

Q. So you disagreed with his decision?

A. That's right.

Q. But did you think that his decision was unjustified or outrageous?

A. Yes.

Q. Did you think his decision was based on race?

Page 169

FENNER

A. Yes.

Q. Why? What's the factual basis for your opinion that his decision not to cover that -- to have you not cover that story was based on race?

A. They had already established a history with me and -- of being racially -- of him discriminating against me because I'm black and he had no interest of advancing my career or me doing good work because he wanted me out of the paper.

Q. Mr. Fenner, we went through a litany of several dozen big stories of national and regional interest, all of which were stories that you were pleased to be assigned to and gratified and you said did good work.

So how can you say he wasn't interested in advancing your career when he and Michelle Gottself assigned you to all of these extremely high profile stories? And the one he didn't want to send you on was the one about a guy living in an old bank building?



<p style="text-align: right;">Page 170</p> <p>1 FENNER</p> <p>2 MR. THOMPSON: Objection.</p> <p>3 Q. How do you justify that statement,</p> <p>4 sir?</p> <p>5 A. The question is what?</p> <p>6 Q. How do you justify saying that Dan</p> <p>7 Greenfield didn't want to advance your career</p> <p>8 by not sending you on a story to cover a man</p> <p>9 living in an old bank building when he, in</p> <p>10 fact, along with Michelle Gottself, sent you</p> <p>11 on some of the biggest breaking stories in</p> <p>12 the country during the time you worked at the</p> <p>13 Post?</p> <p>14 A. They both were openly hostile to me</p> <p>15 during my tenure at the paper. They both</p> <p>16 were screaming at me, and yelling at me,</p> <p>17 throughout the course of my career.</p> <p>18 Q. They were trying to get the best</p> <p>19 work out of you, weren't they?</p> <p>20 A. Yelling at me and cursing at me is</p> <p>21 not getting the best work out of me.</p> <p>22 Q. How many times did they yell at you</p> <p>23 or curse at you?</p> <p>24 A. Several.</p> <p>25 Q. Several? How many? You testified</p>	<p style="text-align: right;">Page 171</p> <p>1 FENNER</p> <p>2 that they cursed at you -- Dan Greenfield</p> <p>3 cursed at you while you were in Milwaukee on</p> <p>4 the Dolan matter. What other occasion do you</p> <p>5 remember Dan Greenfield or Michelle Gottself</p> <p>6 cursing or yelling at you?</p> <p>7 A. During the Heath Ledger story, Dan</p> <p>8 Greenfield was screaming and yelling at me.</p> <p>9 He was berating me about my work.</p> <p>10 Q. Was he trying to get better work</p> <p>11 out of you?</p> <p>12 MR. THOMPSON: Objection.</p> <p>13 A. That wasn't getting better work out</p> <p>14 of me, no.</p> <p>15 Q. Was he trying to get you to do</p> <p>16 something to cover the story more</p> <p>17 aggressively?</p> <p>18 A. I couldn't have covered the story</p> <p>19 any more aggressively.</p> <p>20 Q. In the Dolan incident, wasn't he</p> <p>21 yelling at you, telling you to get yourself</p> <p>22 to a location where Dolan was speaking that</p> <p>23 morning?</p> <p>24 A. He was cursing and yelling</p> <p>25 obscenities at me.</p>
<p style="text-align: right;">Page 172</p> <p>1 FENNER</p> <p>2 Q. But he was directing you to go to a</p> <p>3 location where Dolan was speaking that</p> <p>4 morning, right?</p> <p>5 A. We were yelling about --</p> <p>6 Q. Sir, I need you to answer this</p> <p>7 question.</p> <p>8 A. Question is again?</p> <p>9 Q. He was directing you to go to a</p> <p>10 location where Dolan was speaking that</p> <p>11 morning, correct?</p> <p>12 A. He wasn't directing me. He was</p> <p>13 screaming and yelling at me and cursing at me</p> <p>14 and yelling profanities at me. Like if you</p> <p>15 want to hear those profanities, I can tell</p> <p>16 you them.</p> <p>17 Q. Where were you when that</p> <p>18 conversation was going on?</p> <p>19 A. I was five minutes away from the</p> <p>20 Catholic parish.</p> <p>21 Q. And where was Mr. -- where was</p> <p>22 Archbishop Dolan speaking that morning?</p> <p>23 A. At the parish.</p> <p>24 Q. What was the event that he was</p> <p>25 speaking at?</p>	<p style="text-align: right;">Page 173</p> <p>1 FENNER</p> <p>2 A. There was a press conference that</p> <p>3 morning.</p> <p>4 Q. Are you sure of that?</p> <p>5 A. Yes.</p> <p>6 Q. And how did Mr. Greenfield, to your</p> <p>7 knowledge, learn about that press conference?</p> <p>8 A. It might have been through the</p> <p>9 photo desk.</p> <p>10 Q. He didn't learn about it from you?</p> <p>11 A. I called the reporter. They had</p> <p>12 hired a freelance photographer out of Chicago</p> <p>13 and I called him to tell him he needed to get</p> <p>14 to Milwaukee as soon as he could because</p> <p>15 there was a press conference at a certain</p> <p>16 hour. He informed me that he was an hour</p> <p>17 away. And I believe he then in turn, after I</p> <p>18 spoke to him, called the photo desk.</p> <p>19 Q. And until you spoke to</p> <p>20 Mr. Greenfield that morning, isn't it the</p> <p>21 case that you were not planning to attend</p> <p>22 that press conference?</p> <p>23 A. That's false.</p> <p>24 Q. Where were you -- you said you were</p> <p>25 five minutes from the Catholic parish when</p>

Page 174

1 FENNER  
2 you spoke to him? Did you tell him that?

3 A. I didn't get a chance to tell him  
4 that because he was yelling and cursing at  
5 me.

6 Q. Well, where were you going at  
7 that -- during that conversation? Were  
8 you --

9 A. I was waiting for the photographer  
10 to get closer to the city, to Milwaukee. I  
11 was going to be attending the press  
12 conference.

13 Q. But you were waiting for the  
14 photographer to show up?

15 A. That's correct.

16 Q. And Mr. Greenfield was concerned  
17 that if you continued to wait for the  
18 photographer, the press conference might  
19 begin without you being there, right?

20 A. We were in Milwaukee on central  
21 time. Dan was in New York at eastern  
22 standard time. There was plenty of time for  
23 me to get to the press conference.

24 Q. Why were you waiting for the  
25 photographer? You could cover the press

Page 176

1 FENNER  
2 him arriving at a different time?

3 A. I could have. But it is better to  
4 work in tandem.

5 Q. And --

6 THE VIDEOGRAPHER: I am sorry to  
7 interrupt. There is a cell phone. It is  
8 interrupting testimony.

9 (Pause)

10 Q. Mr. Fenner, what was Dan Greenfield  
11 angry at during the conversation?

12 A. He was cursing and yelling at me  
13 because I was not at the press conference and  
14 it wasn't scheduled to start for another 30,  
15 40 minutes.

16 Q. Did you tell him that you didn't  
17 need to attend the press conference because  
18 you had done an exclusive interview with him?

19 A. I told him that I had made  
20 arrangements to get personal time with the  
21 monsignor -- with the bishop after the press  
22 conference.

23 Q. Did Mr. Greenfield take that to  
24 mean that you were going to skip the press  
25 conference and rely on the personal time you

Page 175

1 FENNER  
2 conference without a photographer there,  
3 right?

4 A. That's correct.

5 Q. So you could have gone -- you could  
6 have gone to that press conference?

7 A. I did go.

8 Q. Without waiting?

9 A. I did go to the press conference.

10 Q. So why were you waiting before you  
11 went until the photographer showed up?

12 A. I wanted to go together with him so  
13 we could work as a team.

14 Q. And you could have -- you didn't  
15 need the photographer there to do your job  
16 which would be to report on what happened at  
17 the press conference, right?

18 A. I did do my job.

19 Q. The question is you didn't need to  
20 wait for the photographer to cover the press  
21 conference, right?

22 A. If he had failed to show up, I  
23 could have -- I would have reported on the  
24 story without him there.

25 Q. Or you could cover the story with

Page 177

1 FENNER  
2 had with the archbishop?

3 MR. THOMPSON: Objection.

4 A. I didn't get it a chance to fully  
5 explain what was going on.

6 Q. Because he got angry?

7 A. He was more than angry. He was  
8 yelling and cursing at me and berating me.

9 Q. During the course of that  
10 conversation, did he ever use a racial  
11 epithet?

12 A. No.

13 Q. Did he ever say anything that  
14 referred to the fact that you are African  
15 American?

16 A. No.

17 Q. And what is your factual basis for  
18 an assertion that that episode was caused by  
19 Mr. Greenfield's animosity towards you based  
20 on race?

21 A. He had never cursed at any other  
22 white reporters, from my white colleagues at  
23 the paper.

24 Q. And how would you -- but you're not  
25 in a position to know all the conversations

Page 178

1 FENNER  
 2 Mr. Greenfield has had with all of the  
 3 reporters that work for him, right?  
 4 A. I've talked to reporters. I've  
 5 been in the newsroom. I was at the paper for  
 6 two years. I'm basing this on my experience.  
 7 Q. You're basing it on experience that  
 8 you personally did not have, right?  
 9 A. This is my experience, yes.  
 10 Q. You're basing it on you -- did  
 11 you -- withdrawn.  
 12 How many reporters work for  
 13 Mr. Greenfield?  
 14 A. I don't have the exact number.  
 15 Q. More than 15?  
 16 A. That sounds right.  
 17 Q. Fifteen sounds right or more than  
 18 15?  
 19 A. You said more than 15 right?  
 20 Q. Yeah, it was probably what, 50?  
 21 A. That could be right.  
 22 Q. And you have no way of knowing all  
 23 of the conversations that Mr. Greenfield had  
 24 with all of his reporters over a period of  
 25 years, correct?

Page 180

1 FENNER  
 2 there and what the fuck is wrong with you,  
 3 was there anything else that he said during  
 4 that conversation that was offensive and  
 5 inflammatory to you? I want to get the  
 6 whole -- I want to get the full picture of  
 7 what was said that was inflammatory.  
 8 A. What the fuck is wrong with you,  
 9 what the fuck are you doing there, get --  
 10 better get your fucking ass over there.  
 11 Those were the words he was using with me  
 12 during the conversation and this went on and  
 13 on and on. And I was telling him to refrain  
 14 from using that language with me.  
 15 Q. Did you tell any of the white  
 16 reporters in the -- in the newsroom about  
 17 this conversation with Dan?  
 18 A. Yes.  
 19 Q. Who did you tell?  
 20 A. Jeane MacIntosh.  
 21 Q. Anyone else?  
 22 A. Dan Mangan.  
 23 Q. Anyone else?  
 24 A. And other reporters.  
 25 Q. Did you ever tell human resources

Page 179

1 FENNER  
 2 A. Not all.  
 3 Q. Well, would you even know -- would  
 4 you even -- would you even know of a fraction  
 5 of them?  
 6 A. I had spoken to my colleagues and  
 7 this -- for someone to curse and scream and  
 8 say what the fuck are you doing there, what  
 9 the fuck is wrong with you, those are  
 10 inflammatory, heated curse words.  
 11 Q. What else did he say besides that?  
 12 A. And if he had done that to another  
 13 white colleague of mine, I'm sure I would  
 14 have heard about it.  
 15 Q. Why are you sure you would have  
 16 heard about it?  
 17 A. Because it was so disrespectful, so  
 18 humiliating. That's how I felt.  
 19 Q. You believe any white reporter who  
 20 heard that, who heard curses from  
 21 Mr. Greenfield would tell you about it?  
 22 A. Information circulates in the  
 23 newsroom and that's the kind of --  
 24 information you usually hear in a newsroom.  
 25 Q. Besides what the fuck are you doing

Page 181

1 FENNER  
 2 about it?  
 3 A. No.  
 4 Q. Did you ever tell the legal  
 5 department about it?  
 6 A. No.  
 7 Q. You, when you were hired by the  
 8 Post, there was a -- you received a manual  
 9 that included the Post's antiharassment,  
 10 antidiscrimination policies, correct?  
 11 A. I think it is from NewsCorp., yes.  
 12 Q. And you got that?  
 13 A. I recall being in the, a session  
 14 that was conducted by employees at NewsCorp.  
 15 about those policies you are referring to.  
 16 Q. So were you -- would you call that  
 17 like EEO training type of stuff?  
 18 A. I believe that's what they called  
 19 it.  
 20 Q. And you understand and understood  
 21 while you were employed at the Post that the  
 22 Post had an antidiscrimination policy and a  
 23 mechanism for complaining about  
 24 discrimination or harassment, correct?  
 25 A. I believe those points were covered

Page 182

FENNER

1 during the session.

2 Q. And you were aware that complaints  
3 of discrimination at the Post under the Post  
4 policies can be brought to the human  
5 resources department and/or the legal  
6 department, correct?

7 A. Can you -- if you say that's so, I  
8 believe that's true.

9 Q. Did you understand when you worked  
10 at the Post that complaints of discrimination  
11 or harassment could be brought to the HR or  
12 legal departments?

13 A. I think that's true.

14 Q. Did you understand that complaints  
15 of discrimination or harassment under the  
16 policies should be reported to HR and legal?

17 A. I understand that, yes.

18 Q. Yet, at no time during your  
19 employment at the Post did you go to HR or  
20 legal and notify them that you believed you  
21 were the victim of discrimination, correct?

22 A. That's correct. I didn't contact  
23 HR or legal, but I did find another mechanism  
24 to enforce my complaint.  
25

Page 184

FENNER

1 Q. Correct, right?

2 A. He is not associated with  
3 NewsCorp., that is correct.

4 Q. And Journalisms is an online blog,  
5 is that correct?

6 A. They publish on the internet.

7 Q. And did you ever speak to Dan  
8 Greenfield about your interview at  
9 Journalisms?

10 A. I didn't speak to Dan Greenfield  
11 about my interview with Journalisms.

12 Q. Did you ever speak to Michelle  
13 Gotthelf about your interview with  
14 Journalisms?

15 A. I did not speak to Michelle  
16 Gotthelf about my interview with Journalisms.

17 Q. Did you ever speak to anybody in  
18 human resources or legal department about  
19 your interview with Journalisms?

20 A. I did not.

21 Q. Did you ever tell any of the senior  
22 managing editors or the editor-in-chief at  
23 the Post about your interview at Journalisms?

24 A. No.  
25

Page 183

FENNER

1 Q. And what mechanism was that?

2 A. I had an interview with a media  
3 outlet called Journalisms and in that --  
4 during that interview, it was regarding a  
5 cartoon, a racist monkey cartoon that the  
6 Post published under the editors -- under Col  
7 Allan, the editor-in-chief that depicted  
8 Barack Obama, the president of the United  
9 States, as a dead chimpanzee.

10 Q. And you -- who did you actually  
11 speak to at that interview?

12 A. The reporter's name was Richard  
13 Prince.

14 Q. And Richard Prince is not  
15 associated with the New York Post, right?

16 A. No.

17 Q. He is an independent journalist who  
18 has a blog?

19 A. I believe he is connected to the  
20 Washington Post and the Maynard Institute and  
21 he runs a media column called Journalisms.

22 Q. And he is not associated with  
23 NewsCorp., correct?

24 A. No.  
25

Page 185

FENNER

1 Q. Do you have any basis for asserting  
2 that Dan Greenfield, Michelle Gotthelf or Col  
3 Allan ever read your interview with  
4 Journalisms?

5 A. Yes.

6 Q. And what is that?

7 A. After the Post published the racist  
8 monkey cartoon, they had hired Howard  
9 Rubinstein, who was a top notch PR firm in  
10 New York City. He was to mitigate and do  
11 crisis communications for the Post. People  
12 were literally taking to the streets to  
13 protest this cartoon because it was so  
14 racially offensive.

15 In that article that was published  
16 by Richard Prince, he says that he spoke to a  
17 spokeswoman for NewsCorp. and I believe that  
18 spokeswoman declined to give him a comment on  
19 the record.

20 Q. So Richard Prince sought a quote  
21 from the Post and the Post declined, is  
22 that --

23 A. He wanted an interview, yes.

24 Q. Other than that, do you have any  
25

Page 186

FENNER

further reason for the assertion or your belief, if you have this belief, that Dan Greenfield or Michelle Gotthelf or Col Allan had read or were aware of your interview with Journalisms?

A. Yes.

Q. What else?

A. Days after the cartoon was published, and then after Richard Prince's story was published, I was in Milwaukee and then I was cursed at and yelled at by Dan Greenfield.

Q. Did Dan Greenfield mention the interview you gave to Richard Prince during your conversations with him when you were in Milwaukee?

A. No.

Q. Have you ever asked Dan Greenfield if he knew about your conversation with Richard Prince?

A. No.

Q. Did you ever ask Michelle Gotthelf that?

A. No.

Page 188

FENNER

dismissive of the stories I was pitching. This was an ongoing -- after she assumed the metro editor's job. This was an ongoing situation I found myself in.

Q. You had received a bad performance warning, a bad performance appraisal and a performance warning in mid 2008, correct?

A. Yes, that's when I said I'm -- I think I'm being set up.

Q. So you didn't get bad performance reviews on account of the cartoon -- on account of your comments about the cartoon, right, because you had been getting those prior to the cartoon?

A. You mean the first --

Q. The first ones were prior to the cartoon?

A. That's correct.

Q. So you had already been yelled at by Dan Greenfield, you had already gotten a negative performance review and you already had a performance warning long before the cartoon was ever published, correct?

A. That's correct.

Page 187

FENNER

Q. Was that the first time Dan Greenfield screamed at you?

A. No.

Q. What was the -- so the other -- so there were times before you got an interview -- you gave an interview with Richard Prince that he screamed at you?

A. He would hang the phone up on me during conversations.

Q. You mean he would hang up on you?

A. That's right. During the Heath Ledger story, he was yelling and screaming at me on the phone during that time.

Q. So if he screamed at you before you gave the interview with Journalisms and he screamed at you after you gave the interview with Journalisms, what causes you to -- withdrawn.

How did Ms. Gotthelf's behavior change after you published the article -- after you gave the interview in Journalisms?

A. Before the Journalisms interview and after, she was nasty to me, yelling at me, complaining about my story ideas, being

Page 189

FENNER

Q. What was the statement that you made that was published in the Journalisms article? Do you recall it?

A. I recall a quote that was printed in the Journalisms article was that it churned my stomach. But if you have a copy of it, it would refresh my recollection.

Q. That sounds right. Do you have any reason to believe that Dan Greenfield was offended by your saying that the cartoon churned your stomach?

A. Can you repeat the question.

Q. Yeah, how do you know that Dan Greenfield was upset at all by your statement that the cartoon churned your stomach?

A. It seemed to me retaliation against me for speaking out against the company about the racist monkey cartoon.

Q. How do you know that Dan Greenfield was offended by your statement that the cartoon churned your stomach?

A. He had already been -- I had already been subjected to a hostile work environment by him, by Michelle Gotthelf and



Page 190

FENNER

by the publication of that cartoon.

Q. So you assumed, without ever asking him, that he didn't like what you said in that quote?

A. I assumed what?

Q. You never asked him whether or not he was offended or not by your statement, right?

A. I never asked him that.

Q. And you never asked Michelle Gotthelf that either, right?

A. I never asked her that.

Q. How is the -- can you explain how it is that the statement that the cartoon churned your stomach was a -- is a complaint about discrimination at the Post?

A. The article was about the racist climate at the paper and it says three things need to be fixed at the Post, and because the cartoon was racist and the climate at the paper was racist, it was suggested that some kind of over haul needed to be done at the paper.

Q. And my question is, your statement

Page 191

FENNER

was the cartoon churned your stomach?

A. Correct.

Q. How is that a complaint about discrimination against employees at the New York Post?

A. It hit me at my core, my very, very core, in my inner soul, to see a black man, the president of the United States, depicted as a dead chimpanzee, shot by white officers under a banner, "We will have to find someone else to write the stimulus bill."

It has been my experience as a black man that -- and knowing history, that you use -- you use cartoons to put people down, to make them less than human before you attack them.

Q. Richard Prince didn't publish in his article any other quotes by you, correct?

A. That was the one quote that he used in his story.

Q. Bear with me one moment.

Mr. Fenner, your complaint at paragraph 72 states, the following makes the following statement. "For example, defendant

Page 192

FENNER

Greenfield admitted that the cartoon was in poor taste and that he was not surprised that the cartoon led to a storm of protests."

Is that a statement in your complaint?

A. Can I read it?

Q. Yes. And your quote was he said it was in poor taste, you said it churned your stomach, right?

A. That's correct.

Q. It is a pretty similar sentiment, wouldn't you agree?

A. No.

Q. Poor taste and churned your stomach are not both similar sentiments?

A. In my view?

Q. Yeah.

A. No.

Q. How are they different?

A. I'm telling you that that cartoon, that racist cartoon touched me in my soul and deeply offended me. Poor taste is like Mrs. Manners, you picked up the wrong fork before you were cutting up a dish on your

Page 193

FENNER

plate, that's poor taste.

Q. They are both negative views about the cartoon, right?

A. Yes.

MR. LERNER: We have been going a while. Let's take a five, ten minute break.

MR. THOMPSON: Sure.

THE VIDEOGRAPHER: The time is 4:04 p.m. We are off the record.

(Recess).

THE VIDEOGRAPHER: The time is 4:28 p.m. We are on the record.

Q. Mr. Fenner, other than what we were discussing before the break regarding your quote in the blog Journalisms, are there any other statements that you made publicly or to New York Post management in which you asserted that you were being discriminated against on the basis of race?

A. No. But I thought that was the best mechanism to reach a national audience about my experiences as a black senior reporter at the paper.

Page 194

FENNER

Q. In September of 2009, after you received that performance evaluation, the Post issued you a second final written warning, correct?

A. Correct.

Q. And we are going to mark NYPFL 500 as Fenner Exhibit 11.

(Exhibit 11, document Bates stamped NYPFL 500 marked for identification, as of this date.)

Q. Do you recognize Fenner Exhibit 11?

A. I recognize it.

Q. Did you receive this final written warning in September of 2009?

A. Yes.

Q. And is that your signature at the bottom?

A. Yes.

Q. And is it your position that this final written warning was issued to you on the basis of your race?

A. That's correct.

Q. And what is your factual basis for that assertion?

Page 195

FENNER

A. Because I disagree strongly with the points made in here and this was used as a tool to fire me.

Q. Did you -- were you given this during a meeting?

A. Yes.

Q. Who was in the meeting?

A. Michelle Gottthelf, Amy Scialdone, Dan Greenfield.

Q. During that meeting, what did they say to you?

A. They said many things. One of the things they said was you're not pitching enough enterprise stories, and during that conversation, I had asked for their guidance to describe a story that had recently run in the New York Post over the last two, three months, that they feel would merit an enterprise story.

Neither Michelle nor Dan nor Amy could give me an answer. They sat silent and were unable to tell me or give me an example of a story that was an enterprise story published in the paper that they -- I should

Page 196

FENNER

use as a guideline for my work.

Q. Isn't it a fact that you were arguing with them during that meeting about the content of this warning?

A. I was strongly disagreeing with them about the contents enumerated here.

Q. And you asked repeatedly, did you not, for an example of an enterprise story?

A. I asked once and they were unable to give me one.

Q. Didn't -- together, didn't you look at the, that day's paper, and didn't they show you stories that no other paper had that day?

A. No. I asked them to give me an example of an enterprise story that ran over the last several months that they felt I should use as a guideline as an example of an enterprise story, and they -- I was dumbfounded and surprised that the three of them weren't able to give me one solid -- were unable to point to one solid story.

Q. Was there a copy of the New York Post there that was used during the course of

Page 197

FENNER

that meeting?

A. I think there was a newspaper in the room.

Q. Did anybody open it up and show it around and point to things inside the paper?

A. I can't recall exactly if they did that, but I asked them straight ahead to name a story during the course of several months, not that paper -- it could have been in that paper and they could have cited that story. But I asked over a span of time and they weren't able to give me one solid story.

Q. But weren't they calling your attention to stories in that day's paper during the meeting?

A. We were talking about enterprise stories and I had asked them to cite an example of a story. They were unable, they were unable to cite one.

Q. My question is narrower than that. During the course of the meeting, were they calling to your attention stories in that day's newspaper?

A. I can't recall. If you have some

Page 198

1 FENNER  
2 information that would help me, I would  
3 appreciate it.  
4 Q. The information is in the question.  
5 The question is do you recall --  
6 MR. THOMPSON: Objection.  
7 Q. Do you recall them calling to your  
8 attention stories in the newspaper of that  
9 day that was in the room?  
10 A. The best answer I can give you is  
11 to say -- because we were talking about that  
12 day's paper and any subsequent paper that was  
13 published over the last several months and  
14 all I wanted was one. I actually would have  
15 appreciated several. They were unable to  
16 give me one, all three of them.  
17 Q. As a senior reporter, isn't it  
18 expected, Mr. Fenner, that you know what an  
19 enterprise story is?  
20 A. I do, I wrote many.  
21 Q. So what was the purpose, other than  
22 rhetorical, of your asking them to identify  
23 enterprise stories that are published in the  
24 Post?  
25 A. I wanted them to give me a

Page 200

1 FENNER  
2 just like when I write my self-evaluations, I  
3 point to specific stories of achievement.  
4 Q. Do you think you had a different  
5 definition of what an enterprise story is  
6 than Mr. Greenfield and Ms. Gotthelf had?  
7 A. I don't think it was different. I  
8 don't think it was different, no.  
9 Q. Well, if you're trying to ask them  
10 to define what one is and give you an  
11 example, did you think that you had a  
12 different definition?  
13 A. No, I thought -- I'm thinking that  
14 clarity would help.  
15 Q. What was the last enterprise story  
16 that you did for the Post?  
17 A. I wrote a piece about an off duty  
18 cop who was killed during friendly fire --  
19 Q. In Mount Vernon?  
20 A. No, in Harlem, and he had just  
21 finished his beat and he was a volunteer, --  
22 he was a volunteer football coach for a team  
23 in Brooklyn and I wrote a story about how his  
24 presence would be missed with the young, with  
25 the young players and the coaches in that

Page 199

1 FENNER  
2 guideline, as something that they found,  
3 meritorious, something that they found to be  
4 a great story.  
5 Q. But you just said you knew what an  
6 enterprise story was and had written  
7 enterprise stories?  
8 A. That is correct.  
9 Q. They know what an enterprise story  
10 is and they have written and edited  
11 enterprise stories, right?  
12 A. Correct.  
13 Q. So isn't the exercise of you asking  
14 them, isn't that sort of just a challenge to  
15 what they are instructing you, what they are  
16 telling you?  
17 A. Not at all.  
18 Q. Wasn't it simply sort of a  
19 combative or aggressive response in which you  
20 were protesting what they were saying as  
21 opposed to actually trying to be  
22 constructive?  
23 A. I saw it as an opportunity for them  
24 to make it crystal clear that we could -- an  
25 actual example we can look at and point to

Page 201

1 FENNER  
2 community.  
3 Q. Was that coach, was that cop named  
4 Edwards?  
5 A. Omar Edwards is his -- was his  
6 name, is his name.  
7 Q. Wasn't he shot in Mount Vernon or  
8 White Plains?  
9 A. He was shot on 124th Street by the  
10 Triborough Bridge, and I covered that story  
11 the night it happened. And what happened was  
12 I had finished working my assignment around  
13 10 o'clock. I had been off more than an hour  
14 and I was heading home to pick up my daughter  
15 when Hechtman called me and asked me if I  
16 could head up there to cover the story.  
17 And I did and I worked until about  
18 2, 3 o'clock that night, in the morning to  
19 cover the shooting of a hero cop, Omar  
20 Edwards.  
21 Q. Why is that an enterprise story?  
22 A. Because it was showing a hero cop  
23 was volunteering his time in the community  
24 with young men who were playing sports and  
25 looking to spend their time doing positive

Page 202	Page 203
<p>1 FENNER</p> <p>2 activities. It showed that he was more than</p> <p>3 just a hero cop, but a contributor to the</p> <p>4 livelihood of the Brooklyn community.</p> <p>5 Q. You told us earlier that an</p> <p>6 enterprise story was a story that involves</p> <p>7 research, it involves background, and it is a</p> <p>8 unique way of presenting news, right?</p> <p>9 A. Correct.</p> <p>10 Q. And this is a story that you get a</p> <p>11 call in your car from an editor, it is</p> <p>12 happening that night, were your words, and</p> <p>13 you are dispatched to that location and you</p> <p>14 write a story for the following day, right?</p> <p>15 A. That story ran weeks later.</p> <p>16 Q. Well, do you know how many words</p> <p>17 that story was?</p> <p>18 A. I didn't count it.</p> <p>19 Q. 149 words. That's a short story,</p> <p>20 right?</p> <p>21 A. Can I see it?</p> <p>22 Q. Do you have the binder of articles</p> <p>23 in front of you?</p> <p>24 A. I do.</p> <p>25 Q. Look at NYPFL 2901. It is toward</p>	<p>1 FENNER</p> <p>2 the back.</p> <p>3 A. FL?</p> <p>4 Q. Sorry, I said it was towards the</p> <p>5 back. It is really not. It is more in the</p> <p>6 middle. 2901 is the number.</p> <p>7 A. I have it.</p> <p>8 Q. Have you had a chance to look at</p> <p>9 it?</p> <p>10 A. Let me read it.</p> <p>11 This story was edited and cut,</p> <p>12 deeply cut.</p> <p>13 Q. Do you still believe this story is</p> <p>14 an enterprise story?</p> <p>15 A. Yes.</p> <p>16 Q. It is not even 150 words? But it</p> <p>17 is an enterprise story?</p> <p>18 A. The editors cut it.</p> <p>19 Q. What did they cut?</p> <p>20 A. The body of the story.</p> <p>21 Q. Do you know who cut it?</p> <p>22 A. I do not.</p> <p>23 Q. Do you know why they cut it?</p> <p>24 A. No. Many times they cut stories</p> <p>25 for space. Could be other breaking news</p>
Page 204	Page 205
<p>1 FENNER</p> <p>2 stories going on. There is a variety of</p> <p>3 reasons why stories are cut down.</p> <p>4 Q. Isn't it a story that would be</p> <p>5 better categorized as a feature, not an</p> <p>6 enterprise story?</p> <p>7 A. You could call it a feature story.</p> <p>8 Q. If your editors called it a feature</p> <p>9 story, not an enterprise story, would they be</p> <p>10 justified in classifying it that way?</p> <p>11 A. Yes.</p> <p>12 Q. In the performance warning, they</p> <p>13 criticized you for not being focused on</p> <p>14 producing enterprise stories. Is that</p> <p>15 criticism --</p> <p>16 A. Where are you looking at now?</p> <p>17 Q. The performance warning, Exhibit</p> <p>18 11?</p> <p>19 A. OK.</p> <p>20 Q. Let me ask you this, is there any</p> <p>21 criticism in that performance warning which</p> <p>22 you believe to be fair?</p> <p>23 A. No.</p> <p>24 Q. Do you agree that at the time of</p> <p>25 the review, you were working as a runner</p>	<p>1 FENNER</p> <p>2 rather than a senior reporter?</p> <p>3 A. No, my review says senior reporter.</p> <p>4 Q. But it also says that you were</p> <p>5 working as a runner?</p> <p>6 A. I had been demoted after I was</p> <p>7 banned from the newsroom and my schedule was</p> <p>8 changed and I was given the duties of a</p> <p>9 junior reporter on my Thursday shift.</p> <p>10 Q. What about Sunday through</p> <p>11 Wednesday? Were you also given the duties of</p> <p>12 a junior reporter on Sunday through</p> <p>13 Wednesday?</p> <p>14 A. I was working as a senior reporter.</p> <p>15 Q. So you think your reporter duties</p> <p>16 are determined by the shift that you worked?</p> <p>17 A. No. The expectation, just like I</p> <p>18 said, is in the final warning, is that I</p> <p>19 produce enterprise stories, that expectation</p> <p>20 never changed and my desire to produce those</p> <p>21 never changed.</p> <p>22 Q. But your product and your output as</p> <p>23 a reporter was more akin to that of a junior</p> <p>24 reporter runner than a senior reporter doing</p> <p>25 enterprise stories, right?</p>

Page 206

FENNER

A. No, I was still working and expected to work to produce enterprise stories and my supervisors have the ultimate say on my shift and what I do. I was still required to cover out-of-town assignments, breaking news, and produce enterprise stories.

Q. But you -- your work was primarily the work of a runner reporter, correct?

A. No, that's not true. I did a variety of assignments.

Q. In the performance warning, it says, in the last paragraph, "Working as a runner for someone with your experience and at your level as a senior reporter is simply unacceptable and cannot continue any longer."

My question is, is it accurate when they said you were working as a runner?

A. I disagree with the critiques in this final written warning.

Q. Do you agree that you had been demoted into working as a runner?

A. No, the expectation and the work I did was that of a senior reporter.

Page 207

FENNER

Q. Did you ever get demoted to runner?

A. No.

Q. When, after the cartoon ran and you said you had a conversation with Dan Greenfield about not coming into the newsroom, was that a demotion to runner?

A. That was a -- I was being banned from the newsroom. I had to ask for permission from my white editors to enter the NewsCorp. building.

Q. Was it -- were you demoted to runner?

A. No. The expectation was that I was a senior reporter and the expectation that I produce the work of a senior reporter was still there.

Q. What did you do each morning when you began your shift?

A. I was required --

MR. THOMPSON: Objection.

Q. You can answer.

A. What did I do each morning what?

Q. Starting in May 2009, what did you do each morning when you began your shift?

Page 208

FENNER

A. I was instructed to call the city desk in the morning.

Q. And await instructions regarding an assignment, correct?

A. That's correct.

Q. Isn't that what a runner reporter does?

A. A runner reporter does those things, yes.

Q. Did Greenfield tell you to work out in the field and that the city was your office?

A. Yes, that was part of the ban from the newsroom.

Q. So as best as you can recall, what did Dan Greenfield say to you during the conversation in which he told you that you should be -- you should not be coming into the newsroom?

A. He told me he didn't want me in the newsroom and that I had to ask for permission before entering the building.

Q. Anything else?

A. He said many things but that was

Page 209

FENNER

one of the things he said.

Q. My question is for you to tell us everything that he said during that conversation that you recall.

A. I can't recall all the facts and all the things he said, but that was the big theme.

Q. So he did not want you in the newsroom and call before coming in?

MR. THOMPSON: Objection.

A. Yes.

Q. Did he tell you why he did not want you in the newsroom?

A. He and Michelle Gotthelf said that they were doing things differently and they needed me to help out on a certain shift because they were short on manpower and they said that they needed me to work this shift temporarily and that we will replace you by the end of the month.

Q. Was the conversation in which you were -- Dan said that he did not want you in the newsroom the same conversation as when you were told that your shift would change?



Page 210

FENNER

A. Yes.

Q. Other than that one conversation, were there any other conversations in which you were told by Greenfield or Gotthelf that they did not want you coming into the newsroom?

A. It was at that meeting when they issued the ban.

Q. My question is, were there any other meetings or conversations in which they communicated the same thing?

A. I can't recall right now if there were any other meetings besides that one.

Q. Did they tell you they didn't want you in the newsroom because of your race being African American?

A. They didn't use that language, no.

Q. Did anyone tell you they didn't want you in the newsroom because you were African American?

A. No, they didn't say that, but it was consistent from the hostile treatment I had been experiencing at the workplace.

Q. But they didn't say that?

Page 211

FENNER

A. That is correct.

Q. Did they say that the reason they wanted you to call for permission before coming to the building was because you're African American?

A. They didn't say that.

Q. Did anybody tell you that that was the reason for them requiring that?

A. No.

Q. Did they tell you why they wanted you to call for -- to get permission before coming into the office?

A. They told me they were doing things differently and that they were short of manpower and they needed me to cover this particular shift.

Q. Did they ever say to you that the reason they were requiring this of you was because of comments that you made to Journalisms about the cartoon?

A. They didn't say that but I believe it was retaliation for that act.

Q. But they didn't say it and nobody else told you that either, right?

Page 212

FENNER

A. No.

Q. It is typical for reporters covering events in the field to get their assignment from the street or from their car, do the reporting from the street, and call the story in or file it by e-mail without ever coming into the office, right?

A. Can you repeat the question.

Q. Yeah, it is typical for reporters covering events in the field to get their assignment when they are on the street or in their car and to do the reporting in the street and call the story in or e-mail it in without ever coming into the office, right?

A. There are many reporters who do that.

Q. There are reporters that can go weeks without ever stepping foot in the office, right?

A. They call those runners, yes.

Q. There are reporters that don't even have desks in the New York Post offices, right?

A. Yes, but they are not black senior

Page 213

FENNER

reporters.

Q. But they are reporters writing stories, covering stories and covering important stories that don't need to come into the office to do that and don't have desks, right?

A. Ikimulisa Livingston was also banned from the newsroom and she is a senior reporter and she is African American.

Q. That is not my question.

A. Can you repeat your question.

Q. Yeah, there are reporters covering stories, covering important stories, that do that without coming into the office and without having desks, correct?

A. I believe -- yes.

Q. And some of those reporters are white reporters, correct?

A. Yes, they are white reporters, but they are not senior reporters.

Q. Do you know if Dan Greenfield or Michelle Gotthelf ever told any reporters other than you not to come into the office?

A. Yes.

Page 214

FENNER

Q. To be out in the field?

A. Yes.

Q. You do know that?

A. Ikimulisa Livingston was a reporter who they told not to come in into -- who they told not to come into the newsroom.

Q. Do you know if they have given that instruction to any white reporters?

A. Not to my knowledge, no.

Q. How did you -- what knowledge do you have on that question as to whether or not they have given that instruction to white reporters?

A. I know they treated me differently than my white colleagues. I don't know of other white reporters who were at my level who they gave the same treatment.

Q. But you also don't know if there are white reporters at your level who were also told to be out in the field, right?

MR. THOMPSON: Objection.

Q. You don't know the conversations that Mr. Greenfield and Ms. Gotthelf had with every one of the white reporters, correct?

Page 216

FENNER

Mr. Greenfield gave you?

A. No.

Q. Did you ever tell anybody about Mr. Greenfield's instruction to you to be out in the field and not come into the office without permission?

A. Yes.

Q. Who did you tell?

A. I told Ikimulisa Livingston, Jeane MacIntosh.

Q. Anybody else?

A. It might have been Dan Mangan, Len Green, and there were others, but I can't think of who those people are right now.

Q. Did Mr. Greenfield ever use the word "banned"? Or is that word to describe what occurred?

A. He said we don't want you coming into the newsroom.

Q. OK. Ban was not his word?

A. He said we don't want you coming into the newsroom.

Q. And he was -- he told you he wanted you out in the field ready to go, ready to be

Page 215

FENNER

A. No, I don't know every conversation they had with all the white reporters. But none of the white reporters who I spoke with told me they had the same treatment.

Q. Were you ever, did you ever call Mr. Greenfield and ask for permission to come into the office?

A. I might have.

Q. And was that permission granted?

A. Yes.

Q. Do you remember how many times?

A. I can't recall how many times.

Q. Were you ever -- you had a swipe card or identification that allowed you entrance into the building, correct?

A. Correct.

Q. Was that ever shut off prior to the time you were terminated by the Post?

A. Before I was terminated?

Q. Yes.

A. No.

Q. Were you ever -- did you ever show up at the office and were told to leave the offices, get out, after the instruction that

Page 217

FENNER

dispatched to a story at 9 a.m., right?

A. Correct.

Q. How often did you come into the office after Mr. Greenfield told you that he wanted you out of the -- out in the field?

A. I can't give you an exact number, but it was very, very few and I was so humiliated, I had to wait until late in the evening before coming into the newsroom so I could get supplies and other things I might have needed to do my job.

Q. On those occasions when you came in late in the evening, did you call for permission or did you feel at those times you could come and go as you pleased?

A. I didn't call for permission, no.

Q. Did anybody ever turn you away from the office on those occasions?

A. No.

Q. Mr. Greenfield never told you that you had to come in after hours if you needed supplies, did he?

A. No.

Q. Did you ever ask Mr. Greenfield for

Page 218

Page 219

1 FENNER  
2 supplies, to come in for supplies during the  
3 day?  
4 A. I can't recall.  
5 Q. Did Ms. Greenfield ever tell you --  
6 I am sorry, did Ms. Gotthelf ever tell that  
7 you you needed permission to come in, if you  
8 came after hours?  
9 A. No.  
10 Q. Did Mr. -- did you ever ask  
11 Ms. Gotthelf to come in for supplies?  
12 A. I can't recall. It's possible.  
13 Q. Did you ever call and ask  
14 Ms. Gotthelf for permission to enter the  
15 office?  
16 A. The answer is no because it was so  
17 humiliating and disrespectful, I didn't want  
18 to put myself through that.  
19 Q. Did you have a computer, a laptop  
20 at the time?  
21 A. Yes.  
22 Q. Did it have wi-fi or 3G  
23 capabilities?  
24 A. No, I had -- I would have to search  
25 and hunt for a free wi-fi at a Starbucks to

Page 220

1 FENNER  
2 connection, right?  
3 A. Right.  
4 Q. And that's what runner reporters  
5 that work for the Post frequently do to file  
6 their stories, right?  
7 A. Senior reporters do it also. The  
8 answer is yes.  
9 Q. Did you receive a car allowance  
10 from the Post?  
11 A. Yes.  
12 Q. How much was that?  
13 A. I forget what the mileage rate was,  
14 but for every mile I drove, there was a  
15 mileage rate attached to it.  
16 Q. Do you know if other runners  
17 received that allowance?  
18 A. I believe all reporters received  
19 that.  
20 Q. Were you able to successfully  
21 perform your job in spite of Mr. Greenfield's  
22 requirement that you not come into the office  
23 without permission?  
24 A. It was difficult but I did.  
25 Q. You were a successful reporter

1 FENNER  
2 do my job.  
3 Q. And how would that work? So would  
4 you write stories on your laptop at a  
5 Starbucks or a cafe?  
6 A. I would write it up, send it in as  
7 an e-mail, or I would call it in for my  
8 notes.  
9 Q. When you were reporting stories  
10 from the field, prior to Mr. Greenfield  
11 instructing you not to come into the office,  
12 didn't you file your stories the same way;  
13 you would file them from the field from your  
14 laptop, whether you were traveling in other  
15 cities, traveling out in the boroughs, New  
16 Jersey, Westchester, Brooklyn? You didn't  
17 come into the office in the afternoon to  
18 write your stories, right?  
19 A. Not all the time, no.  
20 Q. So you were filing stories from the  
21 field prior to Mr. Greenfield's instruction  
22 not to come in, right?  
23 A. Correct.  
24 Q. And you were able to do that using  
25 a laptop computer, cell phone, and a wi-fi

Page 221

1 FENNER  
2 despite that, right?  
3 A. Yes.  
4 Q. You were successful in covering the  
5 story that -- of the bus trip to the  
6 Washington inauguration of Obama even without  
7 a photographer with you, right?  
8 A. That was a very, very difficult day  
9 to work. There were several million people  
10 within a seven block radius of capital and  
11 the monument. It was tough, but I did it.  
12 Q. Did you call the photo desk for a  
13 photographer to go with you on that bus ride?  
14 A. I made several calls to the photo  
15 desk, I put in written requests and I asked  
16 Michelle Gotthelf several times to have a  
17 photographer accompany me on that trip.  
18 Q. And this was the bus, the bus trip  
19 that left at midnight?  
20 A. I arrived, did we -- it was in the  
21 middle of the night.  
22 Q. And what did you want a  
23 photographer to take pictures of?  
24 A. The event.  
25 Q. Which event?

Page 222

FENNER

A. The New Yorkers who were heading to DC.

Q. What exactly did you think would be the images the photographer would capture?

A. You never know what's going to happen. Once we got there, we didn't know what events might unfold, would unfold. So we have to be open and just be ready.

Q. Well, so you wanted -- did you want them to take pictures of the bus ride in the middle of the night?

A. You could have done a photo montage of people sleeping and partying and saying prayers. It could have been an incredible photo montage. I don't know. We will never know unless you make the effort to try to see what you can find out.

Q. Do you know who made the decision at the New York Post not to assign a photographer to that trip?

A. I was requesting from photo -- and I was seeking the aid of my editor, Michelle Gotthelf to get a photographer. Ultimately, the photo desk, the editors at the photo desk

Page 223

FENNER

have to decide, but she is one of the most powerful people in the newsroom. So she has the power to influence to make it happen.

Q. Ultimately, the photo desk editors decide what stories get a photographer assigned, right?

A. I don't know who would make that ultimate determination. Normally they do. This was a historic event. Clearly a once-in-a-lifetime in the history of the country event. They could have.

Q. Did the Post have photographers covering other aspects of the Obama inauguration?

A. I believe so.

Q. Aren't stories published in the Post every day without photos?

A. Some stories.

Q. Didn't stories about the inauguration get published with photos?

A. My story didn't have a photo.

Q. But there were many stories about the Obama inauguration that ran during those several days, right?

Page 224

FENNER

A. Yes, if you want your story to get good play, to have a prominent position in the paper, you want to work hard to make sure there is a photographer accompanying your story, it is going to take up more real estate. It is going to have a bigger splash, a bigger look. It is going to heighten the strength of the story.

Q. My question is, there were many stories that ran during those several days about the inauguration, right?

A. There are many stories that ran.

Q. And many of them had photographs, right?

A. Yes.

Q. So the Post was taking and publishing photos from the Obama inauguration, right?

A. Yes.

Q. In fact, the Post's coverage of the Obama inauguration got an award, right?

A. Yes, with my help.

Q. And with the help of the editors --

A. I wasn't finished. Yes, with my

Page 225

FENNER

help, they won the New York Press Club Award that year.

Q. After the conversation in which Mr. Greenfield told you to work out in the field and call for permission if you were going to come in, did Mr. Greenfield or Ms. Gotthelf ever yell at you?

A. It was a -- it was continuously a hostile environment. They would --

Q. My question is --

MR. THOMPSON: He is not finished, he is not finished answering your question, Mr. Lerner. Please let him --

MR. LERNER: He paused, Mr. Thompson.

MR. THOMPSON: He was in the middle of answering. You interrupted him again.

MR. LERNER: He paused and I thought he was finished.

MR. THOMPSON: You were wrong.

Q. Mr. Fenner, go ahead.

MR. THOMPSON: Let the witness answer the question, please.

A. I found it to be a hostile

Page 226

FENNER

environment throughout my tenure, and after I was banned, yes, they would continue to yell at me, hang up the phone on me, be dismissive of my story ideas.

Q. What did they yell at you about after that?

A. The complaint, about my pitches for enterprise stories and they were just generally dismissive of my work, calling it subpar.

Q. You used the term in your complaint, you used the term "segregated" to refer to the New York Post. What did you mean by that?

A. Can you show me the complaint?

Q. Sure. Do you have a copy of the complaint that I handed to you a moment ago?

MR. DATOO: I think you took it back.

MR. THOMPSON: Do you have an extra copy?

Q. For example, take a look at paragraph 102 which I'll just read for the record and then give this to you.

Page 227

FENNER

"Mr. Fenner often wrote his stories from Starbucks or other local coffee shops while Ms. Livingston wrote her stories from her car or home. In fact, like Mr. Fenner, Ms. Livingston has been forced to perform all her work as a reporter out of the newsroom which is a racially segregated environment, predominated by white males." 102.

Do you agree that the newsroom is a racially segregated environment?

A. Can I read it?

Q. Yes.

A. The newsroom at the New York Post is a sea of white reporters and white editors, and as far as I know, they haven't had a black editor work in the newsroom for the last ten years. And there might be one black reporter working inside the newsroom.

Q. Who is that?

A. That man is Leonard Green.

Q. And is he excluded from the newsroom?

A. No.

Q. When you use the term "segregated,"

Page 228

FENNER

because it is -- and you say it is predominantly white, are there areas in the newsroom that are divided that are for white people versus black people?

A. No.

Q. So when you use the term "segregated," you are referring to the fact that most of the employees are white, is that correct?

A. Right.

Q. You made the allegation that there is only one nonwhite editor in the newsroom. Who is that one nonwhite editor?

A. I think it was the business editor.

Q. Jay Sherman?

A. I believe that's his name.

Q. Isn't it a fact that there are other nonwhite editors? Do you know a gentleman named Ricky Eng?

A. No.

Q. Was he a news editor?

A. I don't know him.

Q. Did you know Juan Rodriguez, an assistant managing editor?

Page 229

FENNER

A. I do.

Q. He is Hispanic, right?

A. He is a photo editor and he is Hispanic, I believe.

Q. When you said that there is only one nonwhite editor, did you have a roster of the -- all of the editors at the Post in front of you when you did that?

A. I just looked out into the newsroom floor and that's what I saw.

Q. You worked in the newsroom for many years, right? Two years?

A. For a long time.

Q. Is the photo department on the newsroom floor?

A. Yes.

Q. Do you know Evelyn Cordon, is she a photo editor?

A. I don't know who she is.

Q. Do you know Juan Arellano photo editor?

A. I believe I do.

Q. Do you know David Rentas, a photo editor?



Page 234

FENNER

Q. Have you ever met Steve Dunleavy?

A. Yes.

Q. How many times?

A. Many.

Q. Where did you meet him?

A. As a competitor at the New York Daily News and we worked together at the New York Post.

Q. When you say you worked together, do you mean you actually worked together on a story or just that you worked at the same company?

A. I would see him in the newsroom and I would see him on assignment.

Q. Did you ever speak to him?

A. Yes.

Q. Did he ever say anything racist to you?

A. He never said anything racist to me, but I'm trying to recall if he would make any racist remarks in my presence while we were both at the story, on a story. That's what I am trying to recall as you mentioned right now.

Page 236

FENNER

Q. In your affidavit, you stated that when you were traveling, the Post did not provide you with the necessary tools to succeed in your job, and you cited a denial of a photographer on the trip to DC. Can you think of any other tools that were denied to you when you were traveling?

A. No.

Q. In paragraph 7 of your complaint, you state that you were denied assignment opportunities, specifically it reads, "Plaintiffs were also discriminatorily denied certain assignment opportunities based on their race and/or color."

A. It says plaintiffs.

Q. Yes.

A. Can I see it?

Q. Sure. It is paragraph 7. I just need that back when you're done. You may have a copy of the complaint in front of you.

What assignment opportunities were you discriminatorily denied based on race?

A. Think that line is referring to Ikimulisa Livingston.

Page 235

FENNER

Q. Anything to add to that answer?

A. No.

Q. So you don't recall any racist stories he made in your presence or any racist remarks that he made in your presence, right?

A. No.

Q. Did Endozien -- did you and Endozien work at the Post at the same time?

A. I don't think so, no.

Q. So whatever comments Dunleavy made to Endozien, and Endozien told you about when you worked at the Daily News, happened before you came to the Post and didn't continue to Endozien after you came to the Post, right?

A. I believe that's correct.

Q. Are you aware of any racist comments made by Dunleavy that were made during the two years you were working for the Post? Or two and a half years?

A. I can't recall.

Q. Are you aware of any other person at the Post making racist remarks?

A. I can't recall.

Page 237

FENNER

Q. OK, so you don't believe that you were denied any assignment opportunities based on race, correct?

A. Correct.

Q. There is also an allegation that you suffered discrimination in pay. Do you believe that that refers to you?

A. Yes.

Q. In what respect did you suffer discrimination in pay?

A. Well, I believe some of my colleagues who had the same level of experience that I had were earning more and also if you had a poor evaluation, you could not receive an increase in pay.

So the fact that I got poor evaluations meant that I didn't get an annual increase.

Q. What white reporters were paid more than you with the same experience and position?

A. I don't have the whole list, but I believe Jeane MacIntosh earned more than I did. Dan Mangan, and there were others, but I

Page 238

1 FENNER  
2 don't have all that information in front of  
3 me.  
4 Q. What's the basis of your belief  
5 that MacIntosh and Mangan made more than you?  
6 A. Jeane MacIntosh told me what she  
7 was earning.  
8 Q. What did she tell you?  
9 A. I believe she told me she was  
10 earning 95,000 dollars a year.  
11 Q. And you were earning 92,000 dollars  
12 a year at the time?  
13 A. That's correct.  
14 Q. What about Dan Mangan?  
15 A. I don't know his exact salary, but  
16 I believe he was earning more.  
17 Q. Do you know how many years of  
18 experience Jean MacIntosh and Dan Mangan have  
19 as reporters?  
20 A. I believe they have a similar  
21 amount of years that I do.  
22 Q. Now, do you know what years each of  
23 them started at the New York Post?  
24 A. No.  
25 Q. Were they there when you started

Page 240

1 FENNER  
2 A. That's roughly correct.  
3 Q. So did you ever complain at the  
4 Daily News about being discriminatorily paid?  
5 A. No.  
6 Q. Did you think that getting a raise  
7 to 92,000 dollars a year from 64,000 dollars  
8 a year was a generous raise?  
9 A. Based on my record -- yes. Based  
10 on my record of achievement at the New York  
11 Daily News and writing history making news  
12 stories, I earned it.  
13 Q. Was that raise an act of racism?  
14 A. No.  
15 Q. Do you know who decided what your  
16 salary would be at the Post?  
17 A. No.  
18 Q. Were you asked what your annual  
19 salary was at the Daily News when you were  
20 hired by the Post?  
21 A. Yes.  
22 Q. And what did you tell them?  
23 A. I'm thinking I might have said  
24 around 75,000.  
25 Q. And were you asked what your salary

Page 239

1 FENNER  
2 there?  
3 A. They were already there when I  
4 arrived.  
5 Q. There came a time when --  
6 withdrawn.  
7 You got a big pay raise to come to  
8 the New York Post, didn't you?  
9 A. Yes.  
10 Q. What was your annual salary at the  
11 Daily News when you left there?  
12 A. Around 75,000.  
13 Q. Wasn't it actually 64,000 dollars?  
14 A. With overtime --  
15 Q. I asked you your annual salary.  
16 A. What I brought home --  
17 Q. My question was what was your  
18 annual salary?  
19 A. 64,000 dollars might be right.  
20 Q. And the annual salary you got to  
21 start at the Post was 92,000 dollars a year,  
22 right?  
23 A. Right.  
24 Q. So you got a raise of almost 30,000  
25 dollars a year to come to the Post, right?

Page 241

1 FENNER  
2 was or were you asked what your total comp  
3 was?  
4 A. I believe the question was what are  
5 you earning.  
6 Q. So at the Daily News, you had been  
7 earning an annual salary of 64,000 dollars a  
8 year and an overtime, that made it about  
9 75,000?  
10 A. Correct.  
11 Q. Did anybody at the Post ask you  
12 what your salary was exclusive of overtime?  
13 A. I don't think I was asked that  
14 particular question.  
15 Q. Mr. Fenner, what year did you  
16 become a reporter at the Daily News?  
17 A. 1994.  
18 Q. And in 1994, do you recall what  
19 your annual salary was in 1994 when you  
20 became a reporter?  
21 A. Probably around 50,000 dollars.  
22 Q. Correct. 51,000 dollars a year.  
23 And that was in 1994?  
24 A. Correct.  
25 Q. And when you left the Daily News 13

Page 258

FENNER

A. I recall her telling me that unless I signed the severance package, she was forcing me to sign it, unless I signed it, I -- my 401 package would be in jeopardy and I would lose it.

Q. How much was in your 401K at the Post?

A. It was over 5,000 dollars.

Q. And how much severance did the Post offer you?

A. Maybe I believe it was eight weeks, I'm not sure. I think it was eight weeks.

Q. Did she tell you you could have a lawyer review your severance agreement?

A. She could have. I don't recall her saying that.

Q. And with respect to what you are testifying was her deception, is your recollection on that clear?

A. Yes.

Q. And your clear recollection is that she said you had to accept the severance package to get your 401K?

A. She said I had to sign these

Page 259

FENNER

documents and she wanted me to sign those documents then and there in her presence.

Q. Did those documents include a 401K rollover?

A. I would have to look at the documents to see if it refreshes my recollection. But I -- I can't recall.

Q. Did you review the severance agreement that she provided to you?

A. The one she put in front of me?

Q. Yes.

A. I believe I read it while I was in that meeting.

Q. Do you recall that the agreement itself states, near where the signature block is, that you have been given the opportunity to review the agreement with legal advisors?

A. If it said that, I knew I wasn't going to sign that document because I knew I couldn't trust her and my editors.

Q. Do you remember the document saying that you had 21 days to consider whether or not to sign it?

A. That sounds familiar.

Page 260

FENNER

Q. Let's mark this. We are going to mark NYPFL 519 through 521 as Fenner Exhibit 13.

(Exhibit 13, document Bates stamped NYPFL 519 through 521 marked for identification, as of this date.)

Q. Take a look at that. And I want to focus your attention on paragraph 4.

A. On the first page?

Q. Yes -- on the second page, paragraph 4.

A. Where it begins "This waiver"?

Q. Paragraph 4 begins "Employee review period."

A. OK.

Q. Does it not state you have a period of 21 days to review and consider this agreement, you were advised to consult with an attorney before you signed this agreement. Do you see that?

A. That's what this document says, yes.

Q. And the sentence, "You are advised to consult with an attorney before you sign

Page 261

FENNER

this agreement" is in bold, right?

A. Correct.

Q. Did you read that paragraph on that day?

A. Yes.

Q. How did that meeting end?

A. Terribly, I was terminated.

Q. How did the meeting itself come to a conclusion? Did you go back to your desk, did you --

A. I was further humiliated. I was escorted out of the NewsCorp. building by plainclothes security detail officers who work for the company.

Q. What floor is -- what floor did the meeting take place on?

A. Maybe the 15th.

Q. So it wasn't on 10, which is where the newsroom is, right?

A. Correct.

Q. You didn't get escorted through the 10th floor, right?

A. I was escorted through the NewsCorp. building by these two security guys

Page 262

FENNER

in plain clothes who look like NYPD detectives and I was treated like common criminal after I had worked so hard for the paper.

Q. Were you in handcuffs?

A. No.

Q. So you weren't treated like a criminal under arrest, right?

A. All criminals are not handcuffed.

Q. You weren't led through the 9th or 10th floor where your coworkers all had their desks and offices, right?

A. My coworkers travel throughout the building. I was not led through the newsroom.

Q. Did you run into anybody on your way out of the building?

A. Did I see anyone?

Q. Yes.

A. I didn't see any of my colleagues as I was being escorted out of the building.

Q. Is there anything else about the meeting that occurred that day that you remember but have not described?

Page 263

FENNER

A. It was the culmination of the racist climate at the newsroom.

Q. Are there any events or occurrences that happened that day in that meeting that you haven't described?

A. I described many of them. I was -- when I was pulled off the assignment, I was told to give my notes to one of my white colleagues so they could finish the work that I had started that day.

Q. Did anybody say anything during your termination meeting about the Sandra Guzman lawsuit?

A. No one said anything about it, but I subsequently learned that she was filing a complaint in federal court against the News Corporation and New York Post the same day I was terminated.

Q. Mr. Fenner, Mr. Fenner, the question is, did anybody say anything during your termination meeting about the Sandra Guzman lawsuit?

A. They didn't say it to me. You are talking about Michelle Gottself, Dan

Page 264

FENNER

Greenfield or Amy Scialdone, is that who you are referring to?

Q. Yes.

A. They did not mention that.

Q. Did anybody in the NewsCorp. building mention that lawsuit to you that day?

A. The only company employees I spoke to that day were Amy Scialdone, Michelle Gottself and Dan Greenfield.

Q. Did they say anything at that meeting about the cartoon that had run in February of 2009?

A. No.

Q. Did they say anything about Sandra Guzman in that meeting?

A. They did not say that.

Q. Did they say anything about Ikimulisa Livingston at that meeting?

A. No, they did not say anything about Ikimulisa Livingston at the meeting.

Q. Do you know when the decision to terminate you was made?

A. No.

Page 265

FENNER

Q. Do you know who made that decision?

A. I would assume that Col Allan and the top editors along with Michelle Gottself and Amy Scialdone made that decision.

Q. But you do not know who made the decision, correct?

A. Correct.

Q. Did you ask for a second chance or another chance or additional chances to retain your job during that meeting?

A. It was pointless.

Q. So you did not?

A. No.

Q. Did you say anything during the meeting?

A. No.

Q. What is the basis for your assertion that you were terminated due to a belief on the part of your editors that you would be a supportive witness to Sandra Guzman?

A. Repeat the question.

Q. Sure, what is the basis for your assertion that you were terminated because of

Page 266

FENNER

a belief on the part of your editors that you would be a supportive witness to Sandra Guzman?

A. Because she was retaliated against by the paper after she complained about the racist monkey cartoon and was -- that was published earlier that year.

Q. OK, but what makes you believe that that your editors terminated you because they thought you would support Sandra Guzman's lawsuit?

A. Sandra complained just like I did about the racist climate at the paper. And she had been terminated because of the comments she had made in complaining about the cartoon and then roughly two months later, so was I.

Q. What's the basis of your information as to why Sandra Guzman was let go from the Post?

A. What's the basis of my information?

Q. As to why Sandra Guzman was let go by the Post?

A. Because I know she complained--

Page 268

FENNER

A. No.

Q. Do you know, do you have any reason to believe the Post had knowledge of her lawsuit at the time that the Post made its decision to let you go?

A. Can you repeat the question.

Q. Yeah. Do you have reason to believe the Post had knowledge of her lawsuit at the time they made the decision to let you go?

A. It was filed -- I believe it was filed in federal court the same day I was terminated.

Q. Do you know whether or not people who decided to terminate Sandra -- I am sorry, to terminate you knew about that lawsuit at the time that they made that decision to terminate you?

A. Do I know that they knew about the lawsuit?

Q. Correct.

A. No.

Q. Other than what we have gone through here today, did you experience any

Page 267

FENNER

Q. What's the source of your information?

A. I read, I read, I read this long e-mail complaint she filed, system-wide, complaining about the cartoon. I saw her complaint and recognized that she was terminated for -- she was -- they were retaliating against her for complaining about the racist cartoon.

Q. So you saw the e-mail that she sent in February of 2009 she was terminated in September of 2009. Based on that, you concluded that her termination was retaliatory, is that correct?

A. Retaliatory and discriminated against, yes.

Q. Did any New York Post editor or executive tell you why Sandra Guzman lost her job?

A. No.

Q. Did any New York Post editor or executive tell you that you were being terminated because the Post was concerned that you would support her lawsuit?

Page 269

FENNER

other discrimination at the New York Post?

A. I was terminated.

Q. We covered that.

A. I was just trying to form my thoughts.

I was terminated because of my race. I was banned from the newsroom. I was screamed at, cursed at, and humiliated by my white editors. I was sent out on many more out-of-town assignments than my white colleagues.

I witnessed other people experiencing racial discrimination at the paper. Ikimulisa Livingston was working as a reporter in the Queens courthouse and she was removed from her position after a white editor in the city desk had an argument with Jesse Angelo who is a managing editor at the paper and so she was forced out of her job.

Leonard Green had written many columns for the paper during his tenure. had made requests to become a columnist, it was denied.

Neil Graves, another African



Page 270

FENNER

American reporter experienced harassment and mistreatment and I learned he was also terminated from the newsroom because he is African American.

I know Doug Montero, who is black Latino, had a column at the paper and that column was taken away from him and I had experienced treatment that was different from my white colleagues at the paper.

And I was retaliated against after I had complained to Journalisms about the racist cartoon that was published by the Post and editor-in-chief Col Allan.

There is another reporter, his name is Leonardo Blair. He had been terminated from the paper after he had filed a lawsuit with the New York Civil Liberties Union about the stop-and-frisk campaign that the NYPD was conducting against Latinos and African Americans in New York City. And the reason why he was terminated was, as I understand it, is he had told his direct editor William Gorta, G-O-R-T-A about it, and because he didn't communicate this idea to Michelle

Page 271

FENNER

Gotthelf, he was terminated. That is my understanding or what has been said about it. But he was a great reporter doing great work at the paper.

Q. White or African American?

A. He is African American.

Q. Do you have any personal knowledge of the facts surrounding --

A. I was going to add another factor to answer your question.

Q. Well, actually my question, sir, was did you experience any other discrimination at the New York Post. You're telling me about what other people are -- what you are alleging other people experienced?

A. It was part of the climate at the paper. The other thing is, when I was banned from the newsroom, I was also -- I experienced a schedule change and given the role of a junior reporter which was supposed to be a temporary position, but lasted through the tenure of my job until I was terminated.

Page 272

FENNER

Q. Were you given the role of a junior reporter or the shift of a junior reporter?

A. The shift.

Q. Do you have any personal knowledge relating to why Leonard Green was not made a columnist or why Neil Graves was let go?

A. You mean why the editors didn't grant it?

Q. Yeah.

A. I didn't understand why. He had written many columns that ran in the paper. And he earned the right.

Q. Did you ever speak to the editors about why they made that decision?

A. No.

Q. Did you ever overhear them discussing why they made that decision?

A. No.

Q. Did you ever see anything written by the editors or any New York Post executives about why they made that decision?

A. No.

Q. Do you have any personal knowledge of the reasons for Neil Graves' termination?

Page 273

FENNER

A. I believe it was because he was African American and he also was ill.

Q. Have you ever asked the people that made that decision why they made that decision?

A. No.

Q. Have you overheard them talking about it? Have you ever seen anything written about it?

A. No.

Q. Did you ever ask the editors of the Post why Doug Montero had his column taken away?

MR. THOMPSON: Let the record reflect that your colleagues are speaking while you're asking the witness questions and that's disruptive.

MR. LERNER: Oh, well, I wasn't distracted by it but Mr. Fenner --

MR. THOMPSON: I am distracted as his attorney. That's improper.

MR. LERNER: I didn't even notice it, Ken.

MR. THOMPSON: I did. That's why I

Page 274

1 FENNER  
2 am bringing it to your attention.  
3 MR. LERNER: Thank you.  
4 MR. THOMPSON: Just Ms. Lovinger  
5 has been getting up throughout this  
6 deposition and whispering in your ear and  
7 giving you notes. That has been  
8 distracting, Mr. Lerner. That's not the  
9 way to have a deposition conducted. You  
10 should ask questions. Not having the  
11 colleagues jump up every couple of  
12 minutes whispering in your ear.  
13 The witness is here answering your  
14 questions and I'm trying to focus.  
15 MR. LERNER: Mr. Thompson leaving  
16 aside whether or not that would even be  
17 improper if it were going on --  
18 MR. THOMPSON: It is disruptive.  
19 MR. LERNER: It is most certainly  
20 not going on. Ms. Lovinger has not been  
21 getting up and coming over to me during  
22 the course of this deposition every  
23 several minutes.  
24 MR. THOMPSON: Mr. Lerner, she has  
25 been repeatedly getting up throughout the

Page 276

1 FENNER  
2 down about it?  
3 A. No.  
4 Q. By the way, Mr. Graves lost his job  
5 in 2011, correct?  
6 A. I believe that's right.  
7 Q. You were no longer at the Post as  
8 of November 2009, right?  
9 A. Correct.  
10 Q. And what's the basis of your  
11 assertions regarding Leo Blair?  
12 A. He was doing -- he was a hard  
13 working reporter.  
14 Q. What is the basis of your knowledge  
15 about Leo Blair's situation? I am asking you  
16 your source?  
17 A. It might have been Bill Gorta.  
18 Q. And what did -- was Mr. Blair an  
19 employee of the Post?  
20 A. I think he was what they call a  
21 perm-lancer, which meant he worked full time  
22 but didn't have the benefits of a full-time  
23 employee.  
24 Q. And you said you might have heard  
25 something from Bill Gorta?

Page 275

1 FENNER  
2 day. You know that.  
3 MR. LERNER: I don't know it  
4 because it is not happening.  
5 MR. THOMPSON: You may disagree  
6 with that, but we have witnesses who have  
7 seen her get up at least ten times to  
8 walk over to you and whisper in your ear  
9 while you are asking Mr. Fenner questions  
10 and we ask that it not be disruptive.  
11 Q. Mr. Fenner, do you have any  
12 personal knowledge as to why Doug Montero's  
13 column was taken away?  
14 A. I believe he was racially  
15 discriminated against when it was taken away.  
16 Q. I didn't ask you what you believed.  
17 I asked you if you have any personal  
18 knowledge regarding why the editors made that  
19 decision? Did you ever speak to them about  
20 it?  
21 A. No.  
22 Q. Did you ever overhear them talking  
23 about it?  
24 A. No.  
25 Q. Did you ever see anything written

Page 277

1 FENNER  
2 A. I did.  
3 Q. When?  
4 A. I spoke to Bill Gorta about it.  
5 Q. When?  
6 A. Soon after Leonardo Blair was  
7 terminated from the paper.  
8 Q. When was that?  
9 A. I believe it was in '08.  
10 Q. And what did Mr. --  
11 A. I believe it was in the fall of  
12 '08.  
13 Q. What did Mr. Gorta tell you?  
14 A. He told me that Leonardo Blair was  
15 fired because he had filed this lawsuit  
16 against the NYPD for their stop-and-frisk  
17 practices. And Leonardo had told Billy that  
18 this lawsuit was going to be issued at the  
19 beginning of the week and Billy told me that  
20 he had informed Leonardo Blair to reach out  
21 to Michelle Gotthelf and I recall Billy  
22 saying that he did not, Leonardo Blair did  
23 not do that, and as a result, he was canned  
24 from the paper.  
25 Q. So in other words, he was canned

Page 286

FENNER

Q. After your work schedule was changed on Thursdays to the 2 to 10 shift and you did it for a number of weeks --

A. Months.

Q. Well, my question is, after a few weeks, did you make a request of Gotthelf or Greenfield to be put back on an earlier schedule on Thursdays?

A. Yes.

Q. And when did you do that?

A. Probably at the end of the month.

Q. Do you have a specific recollection of making that request?

A. Yes.

Q. And who did you ask?

A. Greenfield.

Q. Where did you ask that?

A. I can't recall if I was in the newsroom or if it was over the phone. It was either/or.

Q. And what did he say?

A. No. I asked him if he had found anyone to fill in that position. And he said no.

Page 287

FENNER

Q. Did you specifically -- all right, is that all you said?

A. No, I said more.

Q. What did you say?

A. I said to him, you said that you were going to find someone by the end of the month for this position, that this was going to be a temporary situation.

Q. And what did he say?

A. He said we haven't found anyone yet.

Q. So you continued to remain in that slot on Thursdays?

A. I had to.

Q. After that conversation, did you ever revisit it with him?

A. I believe I did revisit it at one point.

Q. Do you have a specific recollection of doing that?

A. No.

Q. Were you OK with the 9 to 5 shift on the other days?

MR. THOMPSON: Objection.

Page 288

FENNER

A. I preferred the 11 to 7 shift because in the mornings, I could find sources, meet with them, possibly share story ideas before my shift began. It would have afforded me the flexibility to do that.

Q. Well, you could still do that even when you were working 9 to 5, couldn't you?

A. There is no 9 to 5 shift in journalism. If you are working at 5, you are working until 7.

MR. LERNER: Could I get a read on the time elapsed?

THE VIDEOGRAPHER: Yes.

MR. LERNER: Let's take a quick break, five minutes. And we will finish up.

THE VIDEOGRAPHER: The time is 7:04 p.m. We are off the record.

(Recess)

THE VIDEOGRAPHER: The time is 7:20 p.m. We are on the record.

Q. Mr. Fenner, one of the things we were talking about before we were on the break is the Sandra Guzman lawsuit. Were you

Page 289

FENNER

aware that the Sandra Guzman lawsuit was going to be filed before it was filed?

A. No.

Q. When did you learn about the Sandra Guzman lawsuit?

A. I don't know if it was the same day I was terminated or afterwards, from news reports.

Q. You didn't know about it during your termination meeting, did you?

A. No.

Q. You, when you worked at the Daily News, you were a reporter there from '94 to 2007, right?

A. Right.

Q. How does the Daily News organize -- let me withdraw that.

Does the Daily News have runners and rewrites the way the New York Post does?

MR. THOMPSON: Objection.

A. No one at the Daily News is called a runner.

Q. Do they have people who go out and gather facts and report news and then people

Page 314

FENNER

(Exhibit 18, documents Bates stamped AF151, 153, 158, 159, 169, 170, 3750, 3751, 3752, 3753 through 3774 marked for identification, as of this date.)

THE VIDEOGRAPHER: The time is 7:56 p.m. we are off the record.

(Recess)

THE VIDEOGRAPHER: The time is 7:58, we are on the record.

Q. Mr. Fenner, are the letters contained in Exhibit 18 cover letters that you sent in your effort to -- to potential employers in your effort to find a job?

A. Yes.

Q. I notice they are not signed. Did you print these off your computer to --

A. I possibly did.

Q. Are they the final letters that you sent to these employers?

A. I believe they are.

Q. And when you sent a cover letter to an employer, do you endeavor to show yourself to be a conscientious and careful writer and

Page 315

FENNER

describer of your talents?

A. Yes.

Q. Do you believe these cover letters reflect your good writing skills?

A. Yes.

Q. I want you to take a look at the one that's marked AF3753. It is about ten letters in, and it is to the human resources manager of Purchase College.

A. Yes.

Q. Did you send this letter out?

A. I did.

Q. Did you get any response from it?

A. No.

Q. Did you get any response from the letter you sent to CBS News?

A. From this letter, no.

Q. Did you proofread these letters before you sent them out?

A. Yes.

Q. Is Mr. Fenner, you testified earlier that you believe you were sent on assignments involving travel more than your white counterparts at the Post. Do you

Page 316

FENNER

recall that?

A. I do.

Q. What's the basis for your conclusion that you traveled more than white reporters at the Post?

A. I would look in the paper and see the coverage of the day and I knew I was sent out more than my white colleagues on those -- on assignments during my tenure at the Post.

Q. Do you know if there are any white reporters that traveled more than you?

A. I don't think there are. I'm not -- I don't think so.

Q. Have you, other than kind of looking in the newspaper and seeing where people are on a given day, have you done any kind of systematic analysis of how often white reporters travel versus you traveled?

A. The best gauge of what's happening in the paper would be to look in the published paper and see datelines.

Q. Did you ever tally them up?

A. No.

Q. As you sit here today, do you know

Page 317

FENNER

for a fact which reporters traveled how much?

A. I knew I traveled much more than most.

Q. My question is, do you know how much each white reporter at the Post traveled?

A. I couldn't give you an exact number.

Q. And if you were to give an approximate number, it would -- how would you come up with that approximate number as you sit here right now?

A. As I sit here right now?

Q. Yes.

A. Well, I will give you my recollection of reading the paper and looking at date lines. That would be a gauge to use.

Q. Were there white reporters that traveled close to how much you traveled?

A. What's close?

Q. Approximately the same?

A. I couldn't give you a hard answer on that, but I know I traveled more than most of my white colleagues.